

DOCTORAL THESIS

Regulation and the promotion of national audiovisual content in the era of digital convergence a comparative analysis of the United Kingdom, France and Brazil

Nazareno, Claudio

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**REGULATION AND THE PROMOTION OF NATIONAL AUDIOVISUAL CONTENT IN
THE ERA OF DIGITAL CONVERGENCE:
A COMPARATIVE ANALYSIS OF THE UNITED KINGDOM, FRANCE AND BRAZIL**

**By
Claudio Nazareno, Eng, MSc**

**A thesis submitted in partial fulfilment of the requirements for the degree of
PhD**

**Department of Media, Language and Culture
University of Roehampton**

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ABSTRACT

THIS RESEARCH INVESTIGATES HOW the production and distribution of nationally produced television programmes, films and other audiovisual content can be promoted by regulation. The study identifies current regulatory tools to promote national content and differences in policy approaches. It also identifies new issues resulting from the substantial transformation the media environment has undergone in recent years. The audiovisual sector today is characterised by an abundance of television channels and telecommunication services and by ongoing digital convergence, all impacting on the effectiveness and rationale of content regulation.

Focused on the UK, France and Brazil, this comparative research investigates the political, regulatory, socio-cultural, economic, technological and market changes of the communication services in the recent decades and how this has impacted on the provision of national audiovisual content. The starting point of the analysis are the 1980s, when broadcasting started to be gradually liberalised, and it concludes in the 2000s, when information technologies, telecommunications and broadcasting converge into interconnected, complementary and supplementary services.

This research offers a three step method of analysis which contributes to a new understanding of the mechanisms and implications involved in the production and distribution of nationally produced content in digital times. In the first step, the various socio-cultural aims of communication services as enacted in legislation are analysed. The second step explores the consequent regulatory tools for the fulfilment of those objectives. The third step provides a market evaluation of the audiovisual industries, which broadcasters and other distribution platforms provide which kind of content, and also looks at audiences' viewing preferences to get a better understanding of what type of content should be supported through legislation. As outcomes, this research proposes to academics, policymakers and regulators a new definition for national content and a series of regulatory actions for fostering national audiovisual industries in times of digital convergence.

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LIST OF ACRONYMS

3D	- Three dimensional
3G, 4G	- Third and Fourth Generation Network (mobile)
ABC	- American Broadcasting Company
ABPI-TV	- Associacao Brasileira de Produtoras Independentes de Televisao (Brazilian independent television producers association)
ADSL	- Asymmetric Digital Subscriber Line (broadband over fixed telephony lines)
Anatel	- Agencia Nacional de Telecomunicacoes (Brazilian telecommunication regulatory agency)
Ancinav	- Agencia do Cinema e do Audiovisual (Brazilian proposed and abandoned regulatory agency for films and audiovisual)
Ancine	- Agencia Nacional do Cinema (Brazilian cinema agency)
ANFR	- Agence Nationale des Frequences (French frequencies regulator)
Arcep	- l'Autorité de Régulation des Communications Electroniques et des Postes (French telecommunications and post regulator)
ARPU	- Average Revenue Per User
AVMS	- Audiovisual Media Services (European Directive)
BA	- (British) Broadcasting Act 1981, 1990 and 1996
BARB	- Broadcasting' Audience Research Board
BBC	- British Broadcasting Corporation
BC	- (Brazilian) Broadcasting Code 4117/1962
BFI	- British Film Institute
CA	- (British) Communication Act 2003
CADE	- Conselho Administrativo de Defesa Economica (Brazilian competition authority)
CBS	- CBS Broadcasting Inc.
CNC	- Centre National du Cinema et de l'Image Animee (French cinema agency)
Confecom	- Conferencia Nacional de Comunicacao (National Communication Conference held in Brazil)
COSIP	- Compte de Soutien à l'Industrie des Programmes Audiovisuels (French fund for films and television)
CSA	- Conseil Superieur de L'audiovisuel (French broadcasting agency)
DA	- (Brazilian) Decree-Act 236/1967
DCMS	- (British) Department for Culture, Media and Sport
DTH	- Direct to Home (digital broadcast satellite system)
DTV	- Digital (Terrestrial) Television
DVB-H	- Digital Video Broadcasting – Handheld (mobile DTV)
DVD	- Digital Video Disc
EAO	- European Audiovisual Observatory
EC	- European Commission
EPG	- Electronic Programme Guide
EU	- European Union
FCC	- Federal Communications Commission (American communications agency)
Finsyn	- Financial and Syndication Rules (American former rules for independent commissioning of content)
FNC	- Fundo Nacional da Cultura (Brazilian National Culture Fund)
FoCA	- (French) Freedom of Communication Act 1986
FSA	- Fundo Setorial do Audiovisual (Brazilian Audiovisual Sector Fund)

FTA	- Free-to-air (terrestrial television)
FTH	- Fibre-to-Home
GATT	- General Agreement on Tariffs and Trade
GDP	- Gross Domestic Product
HDTV	- High Definition Television
IBA	- Independent Broadcasting Authority (British former regulatory agency)
IBGE	- Instituto Brasileiro de Geografia e Estatística (Brazilian geography and statistics agency)
ICT	- Information and Communications Technology
ICMS	- Imposto sobre Circulação de Mercadorias e Serviços (Brazilian tax on circulation of goods and services)
IMDB	- The Internet Movie Database
IPTV	- Internet Protocol Television
ISDB	- Integrated Services Digital Broadcasting (Brazilian-Japanese DTV standard)
ISP	- Internet Service Provider
ITC	- Independent Television Commission (British, former)
ITV	- Independent Television Plc (main commercial broadcaster in the UK)
ITU	- International Telecommunication Union
M25	- Circular motorway delimiting the London area
MEDIA	- Incentives and Development Measures of the Audiovisual Industry (EU programme)
MDIC	- Ministério do Desenvolvimento, Indústria e Comércio Exterior (Brazilian Ministry for Development, Industry and Foreign Trade)
MPAA	- Motion Picture Association of America
MPEG-2/4	- Moving Picture Experts Group version 2 or 4 (standards for compression of video and audio digital data)
NBC	- (American) National Broadcasting Company
OECD	- Organisation for Economic Co-operation and Development
OFCOM	- (British) Office of Communications
ORTF	- (French, former) Office de Radiodiffusion-Télévision Française
PA	- (Brazilian) Paytv Act 12485/2011
PCC	- (British) Press Complaints Commission
PLC	- Power Line Communication (broadband over power wires)
PM	- (Brazilian) Provisional Measure
PSB	- Public Service Broadcaster or Public Service Broadcasting
PVR	- Personal Video Recorder
SBTVD	- Sistema Brasileiro de Televisão Digital (Brazilian DTV system)
SDTV	- Standard Definition Television
Sofica	- Société pour le Financement de l'Industrie Cinématographique et Audiovisuelle (French specific companies for investment in television and film production)
TNT	- Télévision Numérique Terrestre (French DTV)
TWF	- Television Without Frontiers 1989 (European Directive)
UCG	- User-generated content
UKFC	- United Kingdom Film Council (former)
Unesco	- United Nations Educational, Scientific and Cultural Organization
VOD	- Video on Demand
WiFi	- (trademark for wireless local area network)
WiMax	- Worldwide Interoperability for Microwave Access (trademark for wireless wide area network)
WTO	- World Trade Organization

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INTRODUCTION

DIGITAL CONVERGENCE OF COMMUNICATION SERVICES, where telecommunication, broadcasting and information technologies are highly interconnected, complementary and substitutable, has arguably become a popular topic since the 1990s. This convergence phenomenon has been branded to consumers more vigorously by telecommunication companies since the 2000s with the commercialisation of bundled packages of telephony, broadband and paytv services. This has been taken up by the press (for instance, cover of the *Newsweek* magazine in 2005 with the title *The future of entertainment*) (Foroohar, 2005) and increasingly became the object of academic attention, for example with the bestselling book *Convergence culture: where old and new media collide* (2006) by Henry Jenkins. This is a new period in which video gaming consoles can be connected to the internet to watch television, smartphones used to watch films in transit and television sets to send emails. Recently, the British communications regulator has claimed that we are experiencing a “smartphone revolution”, where especially teens are changing their “leisure activities” (Ofcom, 2011: 4). However, as this study will show, the revolutionary impact of digital convergence is debatable. We have not yet arrived at a time of total substitution of services, or “convergence in substitutes” as argued by Greenstein and Khanna (1997: 203-5), where one ‘big pipe’, one ‘big box’ or one ‘big company’ provides all of our communication needs. Nevertheless, we have certainly reached a point of digital complementarities between services, or as the above authors acknowledge, “convergence in complements”.

In this current era of overlapping and multifunctional communication services, broadcasting channels still play a preponderant role. Price Waterhouse, although admitting that “making predictions in the uncertain world of convergence is dangerous”, envisaged, in 1995, that by the year 2000 the future of ‘home entertainment’ could include:

- Television will act as a movie screen, telephone, fax machine and computer, as the integration of telephone and cable television services increases. Each entity will

borrow from the other, and your neighbourhood will likely boast two competing providers of full-service entertainment, media and communications services.

- It will be a few years before you can "choose your own adventure" from your living room sofa. Although commercial introductions of interactive television will appear in the next few years, there is a tremendous amount of enabling technologies enhancement work that remains before widespread availability and adoption of interactive television can happen.

- Consumers are soon destined for "TV overload." Television stations might number 500 as satellite distribution of entertainment could convert completely to compressed digital transmission within the next five years (Price Waterhouse, 1995).

These predictions have become mainly true in the 2010s. Ofcom (the British communications regulator Office of Communications) lists 122 digital terrestrial FTA (free-to-air) channels and 903 channels on cable and satellite (Ofcom, 2012a). CSA (the French broadcasting regulator Conseil Supérieur de L'audiovisuel), accounts for 27 national digital FTA broadcasters, 196 channels on cable and satellite and 55 VOD (Video on-demand) platforms (CSA, 2011: 9-11). In Brazil there are four national operators of paytv satellite and more than 500 terrestrial channels (Anatel, 2012a, 2012b) forming approximately two dozen nationwide television networks.

Official reports also indicate that traditional television viewing still remains an important activity in current times. Ofcom found that in the UK "[t]ime-shifted viewing using DVRs [(Digital Video Recorders)] accounted for 7% of all viewer hours in 2010" and that viewers spend an unabated four hours per day watching television (ibid: 6), against spending half that amount on the internet (ibid: 74). Certainly, as digital generations become the majority, the predominance of television viewing (or at least how television is watched) is likely to change but it is reasonable to infer that broadcasting services will remain an important communication service for years to come.

The era of 'TV overload' also represents an era of global media. National broadcasters and PSBs (Public Service Broadcasters) have now to compete for the attention of viewers with channels produced by international media conglomerates and audiovisual content on other platforms offered by telecommunication companies. In addition, these competitors may generate more revenues compared to the traditional broadcasters, thus posing an economic challenge to these long established companies.

In the UK, as I will show in Chapter 8, BSkyB, the paytv satellite operator co-owned by News Corp (the 4th largest global media conglomerate) already generates more revenues than the BBC (British Broadcasting Corporation) earns from the TV license. The biggest media group in France is Vivendi, number six in the global ranking and their main shareholders are mainly transnational investors (Vivendi, 2011b). In the three countries analysed in this thesis, the UK, France and Brazil, it is only in Brazil where the biggest media group, Organizacoes Globo (controlled by the Marinho family), is nationally owned. However, of the four paytv satellite operators in Brazil, three belong to foreign telecommunication companies with bigger and global revenues.

From an industry perspective, as noted by Cox (2004: 22) and as will be discussed in this thesis, these multiple options for the delivery of audiovisual media products impact on how content is produced, distributed and financed. From the users' perspective, this variety of services opened up more opportunities for viewers to watch more imported content. The increased availability of foreign content and imported cultural elements in broadcasting services brought by liberalisation sparked continued debates amongst media scholars. There are several views to this cultural discussion as the literature review will show. There are those who consider the consolidation and globalisation of the media as part of an American imperialism strategy, later identified as media imperialism or 'soft power' domination which resulted in homogenised cultures around the world. Others minimise those influences and link them to processes of cultural hybridisation or heterogenisation. Those scholars regard viewers as active audiences who watch content produced in different parts of the world and only culturally assimilate those parts which they are identified with.

While the implications of watching foreign content on local cultures are difficult to assess or to predict, viewing shares give us a more precise indication of the kind of content that attracted more the attention of the viewers. For instance, according to IP Network (2011: 176, 593), in France the most viewed series in 2010 was *The Mentalist* produced in the USA, and in the UK the film with the highest audience share was also an American film, *Shrek III* (Dreamworks, 2010). However, in all three countries studied national content still attracts considerable audiences. In general, the biggest audiences in the UK, France and Brazil, as this comparative media research will show, are achieved by nationally produced programmes. In 2011, in the UK and in France, of the 'top 20'

programmes in all categories, nineteen and eleven programmes respectively, were nationally produced programmes (IP Network, 2011: 174, 572). In the same year in the Brazilian city of Sao Paulo, the list of the 'Top 5' programmes (in one ordinary week) of the seven major broadcasters included only two imported programmes (Ibope, 2012). These examples indicate that although imported content is extensively offered by international and national broadcasters and, undoubtedly, is widely watched, national content in general still attracts the highest viewing shares. However, the competition with global media players, much increased by digitalisation and digital convergence, poses new economic challenges for national producers, broadcasters and distributors.

To address those challenges, the **aim of this thesis** is to look at the current media scenario of the selected case studies - UK, France and Brazil – and to discuss how the production and distribution of national content may be steered by media policy during times of increased competition through digital convergence. With that focus in mind, this thesis will assess if the legal frameworks are adequately adjusted for the support of today's national audiovisual industries and market forces.

This thesis is based on two main **assumptions**. Firstly, because audiovisual content contributes to the generation of culture and expresses and consolidates socio-cultural values, whilst its industry supply chain constitute an important economic activity, optimal cultural policy should balance both socio-cultural and industrial objectives. Secondly, regulation is a significant steering force that shapes the production and distribution of audiovisual content. Certainly there are other forces that contribute to a lesser or higher degree, steering those industries in different directions. However, regulation certainly sets the legal boundaries in which those industries can operate.

This investigation will help to explore **general and specific questions** related to the socio-cultural objectives of communication services and will identify the implications of audiovisual policies for the market. Questions addressed will include: Does the legal framework promote the generation of national audiovisual production? Can regulation alter the global pressure and increase the competitiveness of national content? Is national legislation still effective for fostering national producers in the currently globalised media scenario? Does regulation, and particularly

broadcasting regulation, still make sense in an era of plenty, where audiences decide what to watch, where and when? Are national content, culture and identities under 'threat' with digital convergence and transnational media? Is regulation based on national quotas adequate to regulate media provision in times of digital convergence? Should national content be promoted, and if so why? What are the constraints, similarities and differences of the selected countries? The details of how I conducted this investigation and answered those questions will be provided in the methodological chapter. At this point I wish to present the **rationale for the selected case studies**.

In the diversity of media scenarios, the UK, France and Brazil make an interesting set of countries as they may be regarded as having opposite approaches to audiovisual policy. As Collins (2002: 43-4) notes about France and Britain:

France and the UK represent, in their purest forms, the opposed visions and forces that have shaped EU [(European Union)] audiovisual policy...It would be too neat to state that the UK has been the principal proponent of liberalisation and France the principal opponent, not least because, for the most part, the UK's European audiovisual policy has been conspicuous by its absence! Better to state that the UK has gone with the flow of the policies of integration and liberalisation which have been uppermost in recent EU history, whereas France has perceived such policies to be, at best, insufficient and at worst actively hostile to European interests....
... In contrast to the UK, France has a substantial deficit in its audiovisual trade balance. France invests far greater importance in the furtherance of European political union than does the UK ... Moreover, France unlike the UK, has characteristically seen US film and television programmes as so much cultural pollution.

The choice of Brazil as the third case study was certainly determined by my personal and professional experience. My permanent residence is in Brazil where I work as a policy specialist for the Camara dos Deputados (the lower house of the Brazilian National Congress). However, there are other reasons that justify the Brazilian choice. As opposed to the selected European countries, Brazil is a country that, until recently, did not enforce content quotas in any form of broadcasting (Haje, 2009; Valente, 2008a). In fact as Sinclair (1999: 75) remarks, the main reason behind the major broadcaster, Rede Globo, producing most of their programming in-house is not because of legal impositions but due to their monolithic vertical integration. In this sense, Brazil can be regarded as an almost 'green field' for any kind of policy which intends to promote national content in broadcasting services. As such, in a future regulatory development, Brazil could also benefit from a comparison between these two different models.

Another point that makes the group suitable for comparison is the size of their economy. As the three markets are comparable in order of magnitude (France, Britain and Brazil occupied in 2009 the 5th, 6th and 8th position in regard to GDP (Gross Domestic Product) according to the ranking of the World Bank),¹ it seems reasonable that policies and their effects might be comparable.

Finally, language is an interesting point of comparison. As France and Brazil are not English speakers, their production figures can be compared against the UK, whose native language, English, is regarded as universal or, at least, more easily exportable. Actually, the UK's audiovisual exports is second to the USA (Chalaby, 2010; Collins, 2002: 49; Haynes, 2005: 85) which makes the comparison more significant.

After having justified the theme of this thesis and the selected case studies I would now like to turn to **how I conducted this research**. In order to analyse the impact of the policies that introduced liberalisation, digitalisation and digital convergence on the promotion and the protection of national content I used a three-step method. In the first step I analysed the socio-cultural goals of broadcasting services as enacted by the regulations of each case study. As the preceding literature review will reveal, broadcasting services have significant socio-cultural impact on the society. Therefore, policymakers believe it is important to dictate certain aims and objectives to be followed by the various agents of the audiovisual industries. By performing this first step I identified those aims and the directions in which governments have steered the various communication services between the 1980s and the first decade of the new millennium. The second step analysed the obligations and incentives provided by the regulation in order to promote the production, scheduling and distribution of national content. Those obligations and incentives I will call 'push-pull' regulations. The final third step consists of a market analysis. Using published reports and other secondary data I assessed how the activities involved in the production, broadcasting and distribution of content, as well as audiences' shares and preferences, have developed in recent times. This dual evaluation of regulation and market will indicate which regulations were effective in the fostering of national content. Moreover, the research model will also reveal which types of

¹ Worldbank's online database available at <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?display=default> , accessed on 03/05/2011

content and broadcasting services were induced by the regulatory framework and what kind of socio-cultural values are being fostered by policymakers.

There are various **contributions to knowledge** as an outcome of this research. Firstly, I offer a new methodological approach, divided into three steps of analysis (regulatory goals, tools and market impact), for studying communication regulation and its impact on industry. Secondly, the usage of this new theoretical-conceptual method of analysis applied specifically to the subject of the promotion of national content added to knowledge new understandings of the implications and mechanisms of media regulation. The third contribution is regulatory, as in this study I have identified and constructed a regulatory toolkit to be used for the promotion of national audiovisual industries in times of digital convergence. The final contribution is informative, as little work has compared the developments in broadcasting in Europe to those in Brazil. Those four contributions should be useful to academics, policymakers and governments when designing and identifying policies outcomes and trends in the audiovisual sector in the near future.

Concluding this introduction I would like to outline how this thesis is arranged. The work is divided into two parts. The first part, consisting of four chapters, contains three contextualisation chapters and the methodology chapter. Chapter 1 is dedicated to the academic discussions on the socio-cultural implications of broadcasting. The themes of national culture and identity, the public sphere, the importance of PSBs and how the latter were affected by liberalisation and digitalisation are discussed here. Chapter 2 is focused on scholars' perceptions of the technological and economic implications related to the audiovisual industries in recent times, particularly digital convergence and the new digital audiovisual industry supply chain. Chapter 3 debates the regulatory changes of broadcasting services from the liberalisation of the 1980s up to the present, as viewed by researchers. The political changes that led to liberalise broadcasting and the national counter-forces that reacted to that neo-liberal de-regulation (or re-regulation) are here examined. Chapter 4 details the adopted methodology and the sources of information that were used for the research of the selected countries.

Part Two of this thesis is devoted to the analysis of the three case studies of the UK, France and Brazil. It is also composed of four chapters. Chapter 5 offers an overview of the developments of the different existing communication services in the selected countries and analyses the predominant forces that have shaped the regulatory path after the liberalisation of the 1980s. Chapter 6 comprises the first step of the applied method of this research, the analysis of the socio-cultural aims and objectives of broadcasting as expressed in regulation. Chapter 7 concentrates on the second step of the investigation, the analysis of the 'push-pull' regulations. This step scrutinises the concrete rules and tools used for regulating broadcasting services (such as rules of access, ownership and broadcasting rights) and how the production and distribution of national content is defined, funded and financially incentivised by regulation, the 'pull' factors. As far as content obligations are concerned, during this step I also assess the main 'push' factors, the general quota requirements and specific content obligations, as stated in the licenses of each main terrestrial broadcaster. As a result of those two initial steps, the investigation of how these concepts and tools have been addressed in legislation over time also indicates which path is more strongly pursued by each country's policymakers, whether 'socio-culturalist' or 'industrialist'. Chapter 8 centres on the third step, and analyses the target of these regulations: the impact on the market. By assessing various aspects of production (independent producers, films and television programmes), broadcasting and distribution I evaluate how those markets have developed in recent times whilst, at the same time, analyse the impact of the corresponding regulation. Furthermore, included in the market analysis is the assessment of audiences' preferences and habits in recent times of digital convergence.

After the second part, the Conclusion reflects on the main findings of the policy analysis and highlights four policy recommendations. The regulatory toolkit for the promotion of national content is contained in Annex 1.

After this general overview of the thesis, I will now move on to the first chapter of Part One, the discussion of the social and cultural implications of broadcasting services.

PART ONE

CONTEXTUALISATION, LITERATURE REVIEW AND RESEARCH FRAMEWORK

CHAPTER I

SOCIAL AND CULTURAL PERSPECTIVES OF BROADCASTING

Cultivated from Nature by human labour, culture is the domain of human life, produced by the hand of Man from the planet's limited wealth. Cultivation requires constantly returning to the land to honour the natural matrix of what we do... Culture is freedom, innovation and disruption, but also regulation and tradition, the sediments that constitute who we are in the deep, tectonic movements of what it is to be human
Gilberto Gil, Brazilian singer, composer, politician...
(Gil, 2010)

1.1 Introduction

As described in the introduction to this thesis, the main objective of this comparative media research is to analyse how the policies introduced during the liberalisation of the 1980s, the digitalisation of the 1990s and the current times of digital convergence influence the production and distribution of nationally produced content.² For that understanding it is important to grasp beforehand the cultural and social importance of broadcasting and other new audiovisual media services. That is the objective of this first chapter.

In section 1.2 I will explore how media researchers regard the relationship between broadcasting services, the production of culture and the formation of national identities. In sections 1.3 to 1.5 I will summarise the academic debate around the question whether the liberalisation and globalisation of the media 'threatens' national cultures. Also, I will look at how transnational and local broadcasters have adapted their content in a liberalised and competitive broadcasting

² Content in this thesis refers to any kind of audiovisual production that can be watched on a television set or electronic device: films originally produced for the cinema, series, sport events, news, video clips, etc.

scenario. In section 1.6 I will look at the debates on the creation of a mediated public sphere and the usage of public service broadcasting as a democratic tool for public deliberation and for the creation and distribution of national culture. Scholars' perceptions of the effects of the liberalisation of broadcasting and the introduction of multichannel systems on citizenry and democracy will be addressed in section 1.7. Before the conclusion, in section 1.8 I will explore the academic works that have focused on how the internet and digital convergence contribute towards the production of culture and the public sphere and how they affect the circulation of cultural products and viewing behaviour.

1.2 Television, national culture and identities

When in 1936 the BBC (British Broadcasting Corporation) started the world's first regular television service in London with 20,000 receivers (BBC, 2009b), perhaps no one thought that less than one century later, virtually all households in the country would have access to television. Perhaps even more unthinkable would have been the availability of hundreds of channels enabled by digitalisation. Less than one century after the 'father' of the BBC, John Reith, considered television as an "awful snare" (ibid), 90% of British households have access to multichannel television (Ofcom, 2009a: 120). Also when during the Second World War the first French channel was launched in occupied Paris (Coleman & Rollet, 1997: 35), not many people would have expected that it would become a popular media in that country. Later, when Assis Chateaubriand in 1950 imported hundreds of TV sets for his initial commercial broadcast in Sao Paulo he may not have imagined that currently Brazil would have the same levels of TV penetration as Britain (97% compared to 99% for the latter) (Ofcom, 2009b: 47; Vincent, 2003: 106).

Nonetheless, since its beginnings, broadcasting was identified as an important vehicle of communication and became a matter of national policy, arguably, when governments realised the potentially high impact of messages reaching every household at the same time. The evolution from audio to audiovisual medium, or from radio to television services, only increased the importance of broadcasting. Lull (2000: 53) explains this importance by highlighting the "legitimacy effect" of television: citizens are more likely to accept information and points of view if diffused by

strong and hegemonic institutions. There are many examples where television was used as a national integration vehicle, creating a sense of shared culture and promoting national values and policies. In the case of South Korea and Italy television was used to consolidate the language (Oren & Petro, 2004: 96-100). In Brazil the military government of 1964 realised that through television the continental country could be integrated, creating a strong national identity and consumer economy, besides controlling political information (Newcomb, 2004: 312). Even in the UK the PSB (Public Service Broadcasting) is in tune with some of government's concerns. For instance, in recent times, reality shows broadcast by the BBC address public health and other social issues fitting those programmes within an overall governmental agenda (Ferguson, 2010).

These short examples indicate how television has been used in the past (and still is used) as a tool for integrating and shaping national culture and identities. As Morley and Robins (1995: 68) have pointed out, broadcasters are considered central agents of national culture. They provide a shared past and present by mobilising popular involvement in the calendar of national life (ibid: 65).

If television plays a substantial role by enabling shared experiences, at this point its relationship with culture should be addressed in some more detail. Culture, we should note, is a polysemic term hard to define. The Unesco (United Nations Educational, Scientific and Cultural Organization) recognised the multifaceted characteristic of culture when proclaiming the Universal Declaration on Cultural Diversity:

... culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs, ... (Unesco, 2001: 1).

Although it is possible to identify the contribution of media towards culture as defined in this Declaration, perhaps a more helpful definition for this thesis would be one nurtured from a sociological perspective. From this angle, culture may be defined as “a whole way of life” (Hall cited in Barker, 1999: 11). In this sense, ‘a way of life’ comprises, as Hall also describes “the actual grounded terrain of practices, representations, languages and customs of any specific society” (ibid). The impact of broadcasting on culture can be clearly identified when Barker himself refers to culture as a collective idea of shared meanings and experiences. Combining this definition with

Parekh's (1997: 165), which states that culture is the "beliefs and practices regulating all or major areas of human life", the contribution of broadcasting to the creation and maintenance of culture can be extended to any other form of watching audiovisual content.

Whilst the culture of a nation can be considered as the overall sum of its characteristics, as highlighted by Watson and Hill (2003: 71), including "language, history, traditions, climate, geography, arts, social, economic and political norms, and its system of values", for Benedict Anderson (1991), nationalism is a cultural artefact constantly developed over time which delivers emotional legitimacy. In Anderson's concept of the "imagined communities", the members of a nation, limited in space, share a communion of culture or horizontal comradeship, even without knowing their fellow-members (ibid: 6-7). Although his work was focused on the role of the print media in achieving this and mainly based on European examples, the author recognises the role of the institutionalised usage of the mass media in instilling nationalist ideology and promoting genuine and popular nationalist enthusiasm (ibid: 113-114). In the case of Brazil and other Latin American countries Morley (2002: 255), Lash and Lury (2007: 157) and others remark that the process of constructing an 'imagined community' involves primarily broadcasting. The importance of the media, and in particular of broadcasting, for the crystallisation of shared cultural aspects and of the sense of belonging was also identified by Cannadine (1983: 158) and Hobsbawm (1983: 263).

Morley and Robins (1995: 26-7), while acknowledging the legitimating effect of the media, proposed the "reimagined communities" concept. They recognised that as media became global the formation of meaningful communities and social identities became more complex. Culture is thought as being under a process of transformation subject to global forces (ibid: 37). In this globalised world, Morley and Robins accept the force of audiovisual images in changing the way society perceives the spaces and places of its own. Additionally, while Morley and Robins consider that identities and bonding sentiments are affected by transnational networks and communication flows, they also recognise the trend towards regionalisation and localisation of media spaces, whether enforced by regulation, as in the case of the EU (European Union), or by a growth in decentralised programme-making possibilities and the need to appeal to local audiences (ibid: 40-

41). However, as Sunstein (2001: 97) argues, it has to be recognised that in times of increased communication options and fragmented audiences, shared media experiences are less common and less powerful than a couple of decades ago. Scriven and Roberts (2003: 2-4, 7) argue that as a result of regionalisation and the increase in the number of channels, national identities in Britain and France are fragmenting into smaller groups of different identities in a national context. Nonetheless, even in recent times there are examples when broadcasting demonstrated its attractiveness to wide audiences. In 2009, the final episode of the British show *The X Factor* was watched by 19 million people (Hampp & Hall, 2010). This means that one out of three British citizens shared the same cultural experience.

To conclude, those cultures or reimagined communities are formed and shaped by variable and interdependent image-spaces relationships which include the watching on television of local, adapted and imported content. Broadcasters therefore are contributing to the continuous reshaping of societies and identities. This means that in current times of globalised media there is still a wish to maintain national identities and culture, consequently corresponding broadcasting policies and their enforcement are crucial. Effectively, broadcasting services have been subject to many transformations, particularly since the 1980s, with parts of the world liberalising their services. During the next section I will explore the debates surrounding the effect of globalisation and the liberalisation of broadcasting on local cultures.

1.3 *The global ‘threat’ to national cultures*

The influence of television on national cultures raises considerable debate in the social-communication field. One of those discussions relates to the necessity to protect local cultures by fostering nationally produced cultural products. However, those concerns can be traced back to the period before accelerating globalisation or even before broadcasting. Early last century, when Hollywood silent films were a success in Europe, national governments introduced protective policies restricting film imports (Ulf-Moller, 1998). In the second half of the eighteenth century, the British “half-penny” press was seen as modelled on the American “yellow-press”, introducing some unwanted forms of journalism (Hampton, 2004: 123-4). As Lull (2000: 58-9) reminds us, global

players and international trade can be traced back to the Roman Empire. The difference that makes today's globalisation so powerful is that, as the author highlights, for the first time, there are efficient communications systems that give corporations real opportunities to instantly manage their own interests around the globe.

In the 1960s, when American media started to dominate the global audiovisual market, the cultural imperialism thesis was offered for debate by scholars such as Boyd-Barret (1977) and Tunstall (1977). In that view, it was thought that the American way of life was being spread worldwide for political and economic reasons: weakening communism and promoting American values, brands and goods. Behind the promotion of the free-trade of goods and ideas and by supposedly spreading and consolidating democracy worldwide, the neo-liberal agenda was also regarded as using the entertainment industry at the service of American foreign policy. This non-coercive way of appealing to others, coined by Nye (2006: 26) as "soft power", proved to be effective as American media managed to spread around the globe. As a result of that 'soft'-domination, local cultures and identities were seen as weakened by the global flow of programmes which was, it was argued, leading to a cultural homogenising process (Boyd-Barret, 1977; Tunstall, 1977).

In the 1980s and 1990s as the world's political scenario changed with the fall of communism, and as the western world started to liberalise the airwaves with the advent of satellite TV, the idea of cultural imperialism was revisited (Biltereyst, 2001: 83-4). As there were no more political ideologies in dispute, the colonising effect of the media, it was noted, was not powered mainly by political ideology anymore. It became basically an economic affair. It was the (so-called) transnational corporate media imperialism (McChesney, 2004; 2009: 188-200; Schiller, 1992: 15; 2009: 247-60; Schlesinger, 1991). However, the global flow of audiovisual content that followed the liberalisation of broadcasting, in some cases mostly a one way stream during the 1960s, was still seen by those scholars as having a homogenising effect on national cultures. Detractors of that view, such as Katz and Liebes (1985) or Straubhaar (2009), pondered that, even with massive importations of content, viewers do not passively assimilate the imported values. The notion of active audiences was suggested. According to these critics, viewers process and interpret the content in line with their own social and cultural background. As the meaning of imported content

was thus both transformed and incorporated into local culture, global flow could in fact be said to be increasing cultural diversity rather than leading to homogenisation. Whether content flows and liberalisation are heterogenising or homogenising processes is still debated. More certain is that the 1990s brought a trend for global media to adapt their content in order to succeed locally. Also, the directions of flows increased. These two trends will be the next topic of discussion.

1.4 From globalisation to localisation and the increase in programme flows

As highlighted by various scholars, such as Dutton and Vedel (1992), McChesney and Schiller (McChesney, 2009; McChesney & Schiller, 2003), since the 1970s and 1980s market-led technological developments, namely cable and satellite television, enabled the multiplication of channels. As a consequence, more content was needed to fill the airwaves. In this scenario, as Steemers (2004: 25), Waisbord (2004: 360-61) and Rixon (2006: 68) point out, American programmes originally appeared as the better alternative in terms of price and available quantity and many commercial channels came to fill their schedules with products from the USA. However, as markets developed, local broadcasters recognized that audiences overall preferred local programmes and, in a strategy to maintain their viewing shares, restricted the usage of imports (Rixon, 2006: 186-7). It has to be noted, however, that this equilibrium was also achieved with the aid of regulation. In the case of Europe, by the imposition of national and European content quotas.

Following the traditional local broadcasters, the robust international newcomers to local markets brought by liberalisation started to localise their channels too. In order to give to their brands some local identity and increase advertisement revenues and local audiences, they started to introduce local advertisements, soon changed to the employment of local presenters and then to producing entire programmes locally (Rooke, 2009: 6-7). In what Robertson (1994) referred to as a “glocalisation” process, global companies tailored their products in order to meet local specificities and culture. From one point of view, that practice is regarded as an Americanisation and homogenising process, as channels and parts (or even much) of the content were from the USA. But from another point of view, because the localisation process and global trading also allowed for

local content to be discovered and traded elsewhere, the global presence of international programmes could also be interpreted as heterogenising or hybridising cultures (Latour cited in: Dijkstra, Geuijen, & de Ruijter, 2001). Liberalisation, thus, may be responsible for two different trends: localisation and diversification of content flows.

From the production perspective, these flows implied, in the views of scholars such as Colins, Seagrave and Varis (cited in Scott, 2004), a correspondent division of labour. These academics proposed in the 1970s that international trade of content followed a division of labour which resulted in a form of producing and picking content globally. According to the authors, before liberalisation, Britain specialised in drama, Japan in cartoons and Latin-America in telenovelas.³ More recent research from Magder (2009: 150), Esser (2010), Chalaby (2010) and others, points out that, currently, Britain is more successful in the format business.⁴ According to Magder (2009: 150), the UK is the top exporter of formats and British companies account for half of the world format's trade. Banerjee (2002) increases the number of players in this new division of labour by adding Hong-Kong and India as being the main producers of audiovisual content for Chinese and Indian audiences and Grant and Wood (2005: 36) add Nigeria for the African continent. However, Keane (2006) and Scott (2004) identify this content as peripheral productions and accessories and commercially dependant on a Hollywood-based global system.

The rise of non-traditional audiovisual export countries might have changed the predominant (from-America) direction of flow of programmes for some scholars. More certain is that, although the continuing globalisation did not diminish the demand for local content (Waisbord, 2004), partnerships were created between local and global companies to produce locally (Biltereyst, 2001: 96-7). This regulatory and audience demand for local production may partially explain the substantial increase in the trade of formats. Instead of importing a finished program, a concept is acquired that can be filmed locally. By this practice, audiences are attracted and regulation is complied with. This new tendency is another point to be taken into consideration when designing audiovisual policies. A locally produced format may count as national content for quota purposes.

³ Noun usually given to Latin American television serials in the category of soap operas, *teleromans* and the likes.

⁴ Programme formats are concepts, ideas or recipes of a programme that can be produced or adapted in different locations. More details on the definition of formats can be found in Moran & Keane (2004).

Nevertheless, it introduces exogenous elements into national cultures. Therefore, on one side the broadcasting of formats may be regarded as positive for local industry but on the other side brings in more exogenous cultural values. That introduction, as Waisbord (2004) maintains, may mean that other programmes reflecting genuine aspects of national culture will be under produced (and less viewed) as a result.

However, it must be acknowledged that in television there is a two-way relationship between broadcasters and viewers. As Rixon (2006: 21-2) reminds us, it is a circular model where culture is consumed by audiences and their assimilations and preferences are reassessed by broadcasters and producers and new programmes are then fed back to the system. Therefore, audiences also have an active role, although not directly, in the selection process of the content actually broadcast and hence in the process of the generation of culture and in the formation of a country's cultural identity. In the next section I will present scholars' works that further discuss how audience preferences influenced national broadcasters' practices after the liberalisation of broadcasting.

1.5 The continued strength of national broadcasters

While the previous section highlighted scholars' views on how flows multiplied and how international channels had to adapt to produce locally in order to increase their viewing shares, this section focuses on how others identified that national broadcasters had a clear advantage by being local by nature. Sinclair (2009), for instance, remarks that in the Brazilian case, the main commercial broadcaster Rede Globo still accounts for 60% of television audience shares, the same overall level achieved by their own produced telenovelas, where each episode is watched by 40 million viewers (Allen, 2004: 243; La Pastina, 2002). Harvey (2006) noted the same preference for the traditional terrestrials and main investors of national content in the UK. Even with the advent of digitalisation the traditional national broadcasters, including their spin-off digital channels, are still the most watched channels. Although that preference for national channels is backed by viewing shares, the appeal of national content is more debatable.

La Pastina and Straubhaar (2005), while investigating the reasons for the success of a Mexican telenovela in Brazil and of a Brazilian one in Italy, claim that it is not only the origin of the content which attracts audiences. Instead, it is a more complex set of attraction factors which defines an overall cultural proximity relationship with the cultural source. Again, as noted in the previous section, in the case of EU viewers the notion of cultural proximity is induced by broadcasting policy as there are obligations to broadcast programmes produced by the Member States. By this exposure to intra-European content policymakers expected to contribute towards the construction of a European awareness and European citizenship (Cosse, 2007: 54-6). However, Esser (2007) shows that regional trade in Europe is minimal with the majority of the legally requested content being generated locally (with the exception of those small countries that share a language with a bigger neighbour). These examples show that legislation alone cannot impose radical changes in audience preferences or broadcasters' practices.

Regardless of what causes the attraction to certain types of content, scholars acknowledge the fact that the leading broadcasters rely on national content. According to Cajueiro (cited in Waisbord, 2004), Rede Globo produces 80% of its scheduled programmes and the broadcaster reserves prime-time almost exclusively for exhibiting its own-produced programmes (and Chapter 8 will show the same pattern for the other two countries). Whether national content is aired for its commercial appeal, as in the case of Brazil, or through a combination of audience preferences and regulation, as in the case of the European main broadcasters, local content is still widely watched and continues to play a significant role in the formation of countries' cultural identities. As Becker and Gonzalez de Bustamante (2009) claim, the importance of television towards culture, politics and education have surpassed the influence of traditional institutions such as schools and the church.

However, even if the main terrestrial channels still claim the biggest audience shares and broadcast a majority of domestically produced content, the introduction of multichannel systems and of international channels may be regarded as responsible for a change in the kind of programmes broadcast. National broadcasters had to adapt themselves in order to maintain their prominence by launching more channels, and thus supporting audience fragmentation (Debrett,

2009; Iosifidis, 2005) and by changing the type of content produced and aired in the search of audience ratings (Doyle, 2010; Enli, 2008). As a consequence of that search, those broadcasters (and especially the PSBs) are subjected to criticism from members of the public, politicians, other broadcasters and associations (Maggie Brown, 2010; Iosifidis, 2005). For instance, the BBC Trust (the governing body of the BBC) demanded that the BBC should do less “formulaic and derivative” programming (BBC Trust, 2010; Sweney, 2010).

This discussion is important to this thesis in order to highlight the fact that, if it is desired that broadcasting services, national broadcasters and in particular PSBs are to expand and offer more channels, regulation has to not only dictate that the content produced must adhere to broadcasters’ stipulated remit but also has to foresee mechanisms for creating programmes needed and demanded by the society. From one hand, governments have to bear in mind that national broadcasters must continue to have a certain degree of prominence in the broadcasting scenario but the content that they broadcast must also help to sustain national culture and identity. On the other hand, policymakers must also acknowledge the fact that ‘valuable’ content can also be imported.

Due to their historical significance, PSBs, where they exist, are the public agents usually chosen by governments and society to represent, foster and develop the interests and views of all segments of the society (Price, 1995: 21-39). Therefore, even in times of liberalisation of broadcasting, they continue to play a significant socio-cultural role not limited to the promotion of national content. In the next section I will explore scholars’ work which discusses how PSBs are inserted within the wider concept of sustaining a public sphere of services and why they still are important agents for sustaining cohesive societies.

1.6 Public service broadcasters and their role in enhancing the public sphere

According to Habermas (cited in Price, 1995: 24), the ideal public sphere is one zone with no restrictions - either from government or from economic forces - for the expression and discussion of

opinions and points of view of members of the society. As remarked by Price, this locus, in the case of the media, will only be possible if every member of society has equal access to sufficient sources of independent information. Diverse opinions and plural sources of information, culture and entertainment are fundamental to the construction of a public space which is unbiased and full of knowledge (Price, 1995: 35-6). In the ideal space all citizens (the principle of universal service) should be able to engage, learn and select their sources of information, or of entertainment, from a whole range of opinions (principle of diversity) and produced by different agents (principle of plurality). In summary, it should be a place available for conscious choices. In the views of Murdock (2000: 55), the public sphere should be composed of a network of public institutions where museums, libraries, galleries, schools, universities and media, including broadcasters, will act as nodes securing access to the different forms of public culture. Within that conception, PSBs should be created and maintained. A public service using, not buildings or places, but air-waves, where information, education, and also entertainment, are to be produced and distributed independent from political and economic pressures (principle of impartiality) (Debrett, 2010: 16, 186; Iosifidis, Steemers, & Wheeler, 2005: 9-10; Murdock, 2000: *ibid*).

As those values and principles, as Chapman and Kinsey (2009: 11) have noted, are associated with the so-called Western democracy, not surprisingly, PSBs were set up in the European Community, since the 1950s, and to a lesser degree in the USA (as a national network) since 1969 (Banerjee & Seneviratne, 2006: 312; Ibarra, 2009)⁵, but also in other democratic countries elsewhere. Despite the differences in the characteristics of each country's PSB and the diverse obligations that were put in place, there is a common denominator of concepts that are shared by most of them which is derived from the original 'to inform, educate and entertain' maxim of the 'father' of the BBC, John Reith (Croteau & Hoynes, 2006: 55; Newby, 1997: 16; Price, 1995: 35-6). Debrett (2010: 19) offers a clear definition of the principles that should guide PSBs:

universality of coverage; diversity in programming; reflection of national identity and culture; the servicing of minority interests; the provision of an impartial news and current affairs service free from the influence of business or government; and the delivery of innovative, 'quality' programming designed to inform, educate and entertain.

⁵ In the USA PSB is named PBS - Public Broadcasting System.

Price (1995: 32-3), Harrison and Woods (2007: 29-30) and others argue that when PSBs are guided by those principles, they are informing and representing the society as a whole and they can be considered as instruments of democracy. In other words, if it is desired that citizens are well informed about global, national and local issues, and are to vote and decide about their daily life issues, the media system has to be reliable, impartial and diverse (Croteau & Hoynes, 2006: 29). Thus, and in direct relationship with this thesis, when governments propose new regulations for broadcasting services and for the production of national content, both the nature of this content and the role that PSBs will have for maintaining this independent, plural and diverse mediaspace and their contribution to democracy and citizenship should also be taken into consideration.

Broadcasting, and in particular PSBs, should thus be seen as part of a wider public infrastructure available for all. However, the maintenance of that public space and the importance of PSBs in recent times have changed as a result of embracing different policies and new technologies. During the next section I will explore how scholars regard the effects of liberalisation and of the introduction of multichannel systems on the society, citizenship and democracy.

1.7 Multichannel systems, the (neo)liberal broadcasting approach and its effects on citizenry and democracy

The liberalisation of the airwaves that occurred in the 1980s and 1990s was justified by some policy makers as an inevitable consequence of the technological development which allowed for more services to be introduced, namely more channels in FTA (free-to-air) and the launch of cable and satellite systems (Levy, 1999: 123, 134). Thompson (1997: 48) identifies two different views on this process of liberalisation, either it could be seen as a process of de-regulation or of re-regulation. The author relates the de-regulatory discourse to the, then, new right, championed by the Thatcher and Reagan governments, of diminishing regulations and enabling more services to be delivered, increasing plurality, diversity and choice in several aspects of life, including broadcasting. The re-regulatory discourse, on the other hand, identified a change in the ideology of broadcasting. By that latter view, the aim of broadcasting was shifting from being a national and

public interest service to a more market oriented one with a smaller public delivery (Iosifidis et al., 2005: 10), which often required the setting up of regulatory bodies.

At the audience level, one of the consequences of liberalisation and of the substantial rise in commercial channels, as Price (1995: 13-5) remarks, was the promotion of the culture of consumption. This overexposure to commercial media gave rise to concerns of new generations becoming more materialistic or consumerist, as found by Chia (2010) in Singapore for instance. Some scholars identify the profusion of new media channels with a wider process of “marketisation” of cultural activities, where private companies are increasing their role in society (Iosifidis, 2008; Murdock, 2000) and citizens are increasingly targeted as consumers (Bardoel & D'Haenens, 2008; Born & Prosser, 2001; Doyle & Vick, 2005).

This consumer culture, as Tomlinson (1990: 29) observes, prioritizes individualism over collectivism. Therefore, television, which from its beginning had been an influential cultural force, originally controlled and regulated by the state, would continue to re-configure national identities but in a different way. After liberalisation and digitalisation, this reconfiguration is continuing not only with the aid of one or two publicly owned channels but with hundreds of commercial channels.

The increase in the number of channels, notably of commercial media, affects not only viewing behaviour but, some may argue, could have deeper effects on society and on political systems. As remarked by Price (1995: 38-9), global media content is based on drama and other neutral and apolitical fictional genres that can easily be sold and assimilated anywhere. Not contributing to informing citizens to the same extent PSBs do, commercial broadcasting can be regarded as detrimental to democracy (ibid: 27-8). In fact, as Price puts it, global media, ironically, “may be welcomed by authoritarian regimes precisely because it erodes the domestic public sphere” (ibid: 38). In the same vein Harvey and Tongue (2004) consider that the scheduling practices of multichannel providers - as they displace news, current affairs and serious factual programming to other less viewed channels - contribute negatively to democracy and citizenry. These views are contrary to those developed in the 1950s and 1960s by scholars such as Pye (cited in McMillin, 2007: 29-30), who believed that promoting free flow and removing barriers would be good for the

promotion of democracy and for economical growth, especially in developing countries. But nearly fifty years after those beliefs were expressed, McChesney (2009) details the relationship between News Corp (owner of the satellite paytv platform Sky) and the totalitarian Chinese government, which allowed the company to operate in the country in exchange for delivering apolitical content. The Chinese example may suggest that Price's overall point-of-view is more correct.

Critics have also pointed out that in a democracy where new channels can be easily set up, the increased availability of information and entertainment does not necessarily mean either diversity in terms of content and ideas, plurality in terms of ownership, or impartiality in terms of news coverage (Baker, 2007). As new channels are being created for the placement of advertisements, selling of subscriptions and crowding out competitors, commercial channels will only broadcast content that is successful with a large audience or that attracts a particular niche that advertisers and paying consumers are looking for (Croteau & Hoynes, 2006: 24-6). Being very frank in this approach, Arnold Becker, a senior executive of the American broadcaster CBS stated:

I'm not interested in culture. I'm not interested in pro-social values, I have only one interest. That's whether people watch the program (cited in Gitlin, 2000: 31).

In this commercial model, where market forces dictate what is going to be broadcast, television is seen as no different to the other sectors of the economy. Using the famous quote from the FCC (Federal Communications Commission) chairman, Mark Fowler, in 1983, television is regarded as "just a toaster with pictures" (cited in Croteau & Hoynes, 2006: 27). Citizens are viewed only as consumers and television does not have any other function than to connect products to buyers. As Croteau (ibid) notes, this view implies a distorted portrayal of society. If media is financed by advertisers, media products are primarily produced to attract advertisers as funders. Therefore, if there is a certain group within the society that is not targeted by advertisers, they will not find programmes that respond to their cultural needs. The channels will not address certain segments of the audience, or respond to certain public interests such as diversity. With the other system, the subscription model, where users pay to have access to content, the service is not universal by definition and obviously only those sectors of society with economic means may gain access to certain kind of information and cultural elements. In an extreme hypothetical case, if media is open to subscription services only, entire segments of the population will have no access at all to

information deemed vital for living in a society. Broadcasting policies have to take into consideration that certain cultural elements are vital for sustaining a cohesive society and that, in relation to this thesis, the broadcasting of nationally produced content should not be subject to a 'media divide' between the haves and have-nots.

The favouring of particular content due to commercial interests or, alternatively, internal censorship can also occur due to conflicts of interest between different companies of the same media group. As media is highly consolidated (the result of a continuous process of mergers and acquisitions as will be discussed in Chapter 2) and mainly under the control of a few global groups (McChesney, 2009; McChesney & Schiller, 2003), the output has to respond to the market and to the interdependent companies of the conglomerate (Croteau & Hoynes, 2006: 169-89). Because of those interests, it is reasonable to infer that undesired (for corporations) and less popular content, which achieves less advertising revenue, are likely to disappear from the media. Moreover, as noted by Grant and Wood (2005: 51) the pursuit of maximizing profit over audience sizes "can easily produce the anomaly of a less popular program airing in place of a more-popular one." The discourse where the market, or commercial broadcasters, will supply all sorts of content is then challenged. If media is commercially driven, viewers will have the option to choose between profitable programmes only. This is where the market model fails (Albarran, Chan-Olmsted, & Wirth, 2006: 681). If on the other hand media is somehow regulated in such a way that the whole public is represented, and programmes are not only made with commercial concerns, then audiences are also addressed as citizens and broadcasting is delivered as a public service contributing to democracy and citizenry.

Acknowledging this market failure, in order to reconstruct a more cohesive society, that some may argue has deteriorated as a result of the liberalisation process, new broadcasting policies could be more focused on the promotion of values connected to citizenship. The legal framework should not only be concerned with increasing competition in the hope that commercial broadcasting will supply suitable content 'somewhere in the dial'. At this point I would like to clarify that entertainment and commercial media also are important parts of social activity and, therefore, I am not claiming that to broadcast entertainment is negative for the public interest, or that nothing can be learned from it.

Overall, we should note that the process of introducing commercial channels and multichannel systems does not only have negative effects on citizenship and democracy. Liberalisation also permitted the rapid incorporation of technological developments into citizens' everyday lives with potentially positive effects for the society as well. Those technological changes increased the connectivity between broadcasting and telecommunication services, expanding the boundaries of media and the reach of information. Moreover, that connectivity implies that broadcasters can interact with users by using other services diverting users from public services, and potentially from national content. As a consequence and in connection with the objective of this thesis, the design of media policies should take into consideration that the promotion of nationally produced content should not only be restricted to traditional broadcasting services. Issues such as advertising and product placement may be enhanced by interactivity, jeopardising the effectiveness of existing or future regulation designed for traditional television services only.

Of the new platforms available for accessing audiovisual products, the internet, because of its increasing popularity, could perhaps be regarded as the most important. How this new media and the process of digital convergence are challenging the production of national culture, and their potentiality as important contributors towards national culture and a vibrant public sphere, will be examined during the next section.

1.8 The effects of the internet and digital convergence on culture and the public sphere

In the age of digital technologies and as 'digital generations' and the so-called active users become the majority, it is undeniable that media will be consumed differently and 'broad'casting (as opposed to 'narrow'casting, where only a niche of viewers are interested in a particular content) is likely to be less important (Bruns, 2007; Harries, 2002; Hirst & Harrison, 2007: 9-11). Negroponte (1995: 169) asserts that "[o]n demand information will dominate digital life. We will ask explicitly and implicitly for what we want, when we want it." However, for some that age is still to come. Reports indicate that even in households with personal video recorders, users watch mainly live as

opposed to non-linear television (Spanier, 2010).⁶ Barwise (2010), who refers to the false dawn of non-linear television as “waiting for *Vodo*”, claims that in those households, 80% of the viewing time is dedicated to watching live TV and the remaining 20% to ‘catch-up TV’, i.e. watching missed aired programmes. Others like Des Freedman (2010) argue that watching television is simply still a far more popular activity than posting blogs or videos on the web.⁷

It is undeniable that the internet is a powerful medium, as more and more time is spent on it. However, Hundley and Shyles (2010) in the USA, and Van Cleemput (2010) in Belgium, found that, although new electronic devices and media are displacing old technology from being the sole source of entertainment and information, young users still watch television while using multiple media. Thus, even with the internet and videogaming competing for attention (70% of youngsters use more than one medium at the same time) television still maintains its importance (Pan, 2004). In Tokyo and in London, researchers and analysts found that even when youngsters are using social networking sites on the internet, they more often than not comment on television content (Pennington, 2009; Takahashi, 2010). These findings match perceptions of other researchers who point out that new media supplements rather than substitutes the traditional ones (Papathanassopoulos & Negrine, 2011: 110-2), despite some clear cases of substitution like in the case of newspapers (De Waal & Schoenbach, 2010).

Because of its increasing importance, and as more users watch audiovisual content using the internet, the web could be regarded either as supporting national culture or eroding it. The internet and user-generated content (UGC) sites, such as Youtube, Myspace or Facebook, enable virtually any user (or ‘viewer’ or ‘producer’) to produce cultural products and distribute them at extremely low costs and with relatively simplified technology. This may suggest that the internet is a democratic tool contributing towards the diversification of culture. For scholars such as Compaine (2006) or Jenkins (2006: 17-24), the usage of the internet as a participatory media, where virtually

⁶ According to the author only 15% of television viewing is time-shifted; video-on-demand (VOD) represents 6% and; on-line viewing only 2%. VOD is often referred to as non-linear TV, a ‘television-like’ telecommunication service where the user chooses the programme from a catalogue for viewing at her/his desired time as opposed to linear television, the traditional model, where the broadcaster sets the broadcasting schedule.

⁷ The author cites that, according to Ofcom, only 12% of the online population posts blogs and even less, 9% upload videos.

any user can be a journalist, an artist or a broadcaster, could also be regarded as a contribution to the public sphere. Therefore, media policymakers could rely on the internet as the saviour of plurality, diversity and the public space in digital and global media times. Ultimately, the web could be regarded as a cultural disseminator platform that could substitute PSBs. Jenkins (2006: 2-4), however, recognises that these new opportunities are not equally appropriated by all individuals. Corporations and more digital literate users attract more attention than others (ibid).

Van Dijck (2009) is more incisive about the unlikelihood of the empowerment of citizenry by those tools. She believes that, as the most popular sites are developed and owned by media giants, the internet has limited potential to challenge their economic power or, as she puts it, “wresting power from the few” (ibid: 42). Along the same lines, Ritzer, Dean and Jurgenson (2012) believe that capitalist interests will soon dominate the “libertarian” “prosumers” that operate on the internet.⁸ Other authors also claim that, as the internet is highly concentrated in terms of ownership, it replicates the same model of commercial broadcast, jeopardising pluralism and diversity and weakening the public space (Croteau & Hoynes, 2006: 256; Howley, 2005; Liu & Chan-Olmsted, 2002; McChesney, 2000). Highlighting specific content as ‘spotlight’, ‘recommended’ or ‘featured’, is a common practice on sites such as Youtube and hides a commercial strategy not transparent for users. Kim (2012) is more emphatic about the commercialisation of UGC sites and claims that Youtube was transformed, instead, into a PGC (professionally generated content) driven video site. According to these views, plurality of creation, and hence of views and opinions, is compromised. As Lull (2000: 53) pointed out while citing the case involving Sheryl Crow and Wall-Mart,⁹ “corporate influence over popular culture should not be underestimated[.]” As currently the internet rivals commercial broadcasting in terms of advertising revenues,¹⁰ there are no clear indications that corporate influence will be restrained on the internet. Thus, although new technologies can be seen as an additional layer of the public sphere infrastructure, the validity of the internet as a truly independent and non commercial media is debatable.

⁸ *Prosumer* or *produser*, as the authors remind, is “one who is both producer and consumer[.]”

⁹ In '96 Wall-Mart refused to sell a Sheryl Crow album because of a lyric that criticised the company for selling handguns.

¹⁰ According to the press, in 2007 Google’s British branch beat ITV, the main British commercial broadcaster, in terms of advertising revenues (Sabbagh, 2007). In 2009, also in the UK, the internet overtook TV from being the first medium for advertisement expenditure (Sweney, 2009).

As new platforms and technologies are developed, there is another characteristic that emerges from this digital *mediaspace*. Jenkins (2006:18-9) points out that users of new media are migratory, without loyalty to broadcasters or other traditional media. In a spiralling cause-effect reaction, media owners are responding to and stimulating this shifting behaviour by developing new channels for the delivery of content and by enabling its flow across different platforms via interactive services. Doyle (2010) refers to this “reversioning” of content for new, and usually, interconnected platforms as a “360-degrees” approach of commissioning and distributing content (I will return to this point in Chapter 2 when discussing distribution windows). Enli (2008) regards this continuous interaction mainly as a way of maintaining viewing shares in a segmented and digital world. Others, such as Hirst and Harrison (2007: 315-33), see interactivity and the internet as forms of increasing revenues, by gaining information about users and increasing commercial surveillance. Thus, it may be claimed that the plethora of media options enabled by liberalisation resulted in the proliferation of cultural products to be consumed, i.e. not only to be watched, but also to be purchased, downloaded and branded, all of which increase consumerism. Moreover, that increase represents more competitors to national broadcasters and possibly national culture. However, it has to be remarked that multiplatform content was also developed by PSBs, showing that not only commercial television may profit from digitalisation. Perhaps one of the most successful examples of spawned products in the UK is the BBC TV series *Doctor Who*, which generated interactive adventures, webcasts, online games and podcasts (Perryman, 2008).

Furthermore, digital convergence implies that national broadcasters and national producers, including PSBs, have a wider scope of products to produce, distribute and finance in order to be competitive and justify their existence in an era of audience fragmentation and media abundance. Thus, the arrival of digital convergence must be taken into consideration when national governments are designing their policies for broadcasting. If nationally produced content is to be fostered, broadcasting, and PSBs, should be regarded as part of a more complex mediaspace where content crosses platforms. Therefore, digital convergence raises some other questions: What kind of cultural products are we subjected to and which get neglected? How are national cultures and identities developing in this new world where global media companies are offering their cultural products side by side with non commercial national broadcasters, the PSBs? How do

the new platforms and digital convergence affect the production and distribution of nationally produced content? As this thesis unfolds, these interrogations will be addressed, and the reader will have a comprehensive understanding of the various aspects that are involved in the promotion of national content.

1.9 Conclusions

During this chapter I have summarised academic works that explain why broadcasting is (still) important not only as a source of entertainment but also as a vehicle whose outcome influences and interacts with national cultures and societies. With this discussion, I explored the socio-cultural debates about the importance of broadcasting and how they developed in the changing media space of the recent times. By drawing on various scholars' conclusions I have shown that, besides entertaining, the other two *Reithian* pillars of PSB, to educate and inform, are essential for democracy and for supporting a fairer and egalitarian society. The availability of reliable, independent, plural and diverse information and culture for all sectors of the society should still be considered as vital. However, the liberalisation process of the last decades which occurred in many parts of the world in broadcasting services has led global media companies to grow into huge corporations present in almost every country. Those companies are trading major blockbusters (as already happened in the early days of Hollywood silent films), series, formats, entire channels and multichannel systems. They are also offering cultural products that are crossing through different media and distribution platforms. As a result, viewers receive more consumer-like audiovisual content rather than the traditional kind of programmes delivered by PSB to citizens. The discussions have also shown that, because of the, arguably, commercial characteristic of the internet, to rely entirely on the web to 'wrest power from the few' and provide an independent public space and diminish consumerism, seems inadequate.

With regards to the internationalisation of broadcasting, some scholars are still debating whether this has a homogenising or heterogenising effect on culture and to what extent global media conglomerates are dominating the output of broadcasting. Others, such as Harvey (2006), Sinclair (2009) and Straubhaar (2009), have argued and revealed figures showing that viewers are still

largely attracted to national broadcasters and content. Locally produced content may have imported concepts, like in the case of formats, or have been locally developed but influenced by foreign strategies and competition. Nevertheless, national content still has to be regarded as a contributor and an important shaper of local culture. Because of its importance many scholars, including Siebert, Peterson and Schramm (1963: 50) and Croteau and Hoynes (2006: 65-71), have argued that broadcasting has always been, and maybe will in the foreseeable future, be an object of regulation. As Price (1995: 224) noted that broadcasting is the most invasive media, it is justifiable that national identities and socio-cultural values should be part of the main aims and objectives of the broadcasting regulation.

Finally, the discussions of this chapter have revealed that the concepts of diversity, plurality, democracy, citizenry and cultural relevance may be regarded as important descriptors of the socio-cultural aims and objectives of broadcasting services. As such, those five concepts will form the basis of my comparative research into national content and the socio-cultural aspects of broadcasting as enacted by the regulators of my case studies. Before detailing these five concepts in the methodology chapter, during the next chapter I will focus on the technological and economic aspects of the new phenomena of digital convergence and how they affect the production and distribution of national content.

CHAPTER II

RECENT TECHNOLOGICAL DEVELOPMENTS AND THE POLITICAL ECONOMY OF THE DIGITAL AUDIOVISUAL INDUSTRIES

*While the Americans might need such a daft thing, Britain has
plenty of small boys to run around with messages
The Postmaster General
commenting on Bell's recent invention: the
telephone
(cited in Manners & Makimoto, 1995: 18)*

2.1 Introduction

The transformation of TV programmes or films to computer-like files, as enabled by digitalisation, means that this content can now be transmitted through telecommunication networks and be watched on innumerable devices other than the traditional television set. Alternatively, television sets can be used interactively and, in conjunction with telecommunication services, be used for other purposes than watching television. Digitalisation has thus added new instant and simultaneous circulation opportunities for audiovisual content around the globe whilst, at the same time, enabled the audiovisual industry to generate additional revenues in interconnected platforms. The understanding of the new high-impact economic and technological dynamics brought by digitalisation and digital convergence is crucial for designing media policies that will effectively promote the production and distribution of national content in current times.

To foster understanding, this chapter will be divided into two sections. The first section is devoted to the discussion of why the different media have gone digital and the effects of digitalisation on the different communication services. The second section concentrates on the debate on how

liberalisation and digital convergence have enabled the formation and consolidation of global media empires and affected the audiovisual economy both worldwide and nationally.

2.2 The digitalisation of television and convergence

In the times of celluloid, a film had to be physically copied in order to be seen in different cinemas at the same time. Television, which in the early beginnings was mostly live, also used tangible videotapes in order to broadcast content. Digitalisation changed this physical paradigm. Now content is electronic and can be transmitted and replicated elsewhere instantly. Or as Negroponte (1995: 163) remarks, in the digital world “the manufacturing of bits could happen anywhere, at any time.” Other authors such as Grant and Wood (2005: 46-7) have also noted that, unlike goods that need to be manufactured or grown to be consumed, such as cars or food, the physical reproducibility of the content is not necessary anymore. For instance, while a car needs a factory, personnel and raw materials to be reproduced, a film does not need to be shot again. Identical copies can be made with the only additional cost of a supporting media (a DVD disc or other storage device). Walter Benjamin, in 1936, described in his work *The work of art in the age of its technological reproducibility* that the industrial age made possible the reproducibility of works without the need (and the cost) of an artist. In the Information Age, copying electronic content, eliminated, in practical terms, even the reproduction cost (cited in: Doncel, 2010:2). Networks, connectivity and electronic files do the reproduction and distribution job almost instantly. In consequence, currently, cultural products are accessible through different methods of delivery. Not only museums or cinemas but also cable, mobile operators and websites are used for the consumption of cultural products and, in particular, audiovisual content.

This phenomenon, in which communication services and networks have an overlapping functionality, are highly interconnected and are, to a certain extent, interchangeable, is referred to as technological or digital convergence (Pagani, 2003:4-8, 25). With digital convergence, today's audiences have a variety of devices to use, whether it is to communicate, to watch or to consume different kinds of media. However, digital convergence is not noticed by the end user only. The convergence of the formerly highly separated industries of computing, telecommunication

(particularly telephony) and broadcasting had also significant impact on all aspects of the audiovisual sector (Block, Houseley, Nicholls, & Southwell, 2001: 180; Langham, 1996: 51). In order to understand the implications of digital convergence for the production of national content, first it is important to understand the driving factors that scholars have identified as leading to the digitalisation of broadcasting services.

2.2.1 The digitalisation of satellite, cable and terrestrial

Digitalisation began in satellite and cable in the mid 1990s, nearly 30 years after the start of those services (Grimme, 2002: 235) mainly as a solution for the limited capacity of the analogue systems.¹¹ As widely acknowledged, the compression of the signals allowed by digitalisation was the alternative to increasing the number of channels and revenues of paytv systems (Beacham 1995 cited in: Huff, 2001: 115). The evolution of the MPEG (Moving Picture Expert Group) digital compression technique illustrates how digitalisation supported a multiplication in the number of channels. By using the MPEG-2 version, up to ten channels can be transmitted through the air using the same amount of spectrum of one single old analogue channel (Fischer, 2010: 3). Furthermore, the MPEG-4 upgrade increases that capacity by 70% (Costa & Lucena Junior, 2008).¹² Compression may have an upper limit as remarked by Fontaine and Pogorel (2006: 67), nevertheless, so far, the continuing evolution of technology is allowing the launching of more channels or services consuming fewer resources (Collins, 2002: 148).

Besides the increase in capacity, for some as Ciciora (2004: 71-72), the driving force for the digitalisation of cable is considered to be the development of HDTV (High Definition Television).¹³ According to the author, high definition was appropriated firstly by paytv services as a means to increase revenues by offering premium subscription content, more options for pay-per-view and, also, VOD.

¹¹ For a better understanding on the technologies involved with the transmission and digitalisation of broadcasting services and for a discussion on how digitalisation increased capacity and changed the scarcity paradigm inherent to analogue systems see Annex 2.

¹² See Annex 2 for more information.

¹³ Although for others as, Negroponte (1995: 37-8) HDTV was developed as an evolution for FTA (in fact, as explained by Winston (1996: 88), the first developments of HDTV were made for analogue television and were conducted by Japanese PSB NHK).

Free terrestrial broadcasting was the last broadcasting distribution technology to become digital. As Starks (2007: 62) explains in his book about the UK's digital switchover, while cable and satellite providers benefited from digitalisation as a source of additional revenues by offering more and better services, terrestrial broadcasting faced several difficulties in their upgrading path. The option for multiprogramming and the consequent increase in the number of channels delivered would not necessarily be positive for commercial and public broadcasting.¹⁴ With multiprogramming DTV (terrestrial -FTA - digital television) would increase the fragmentation of advertisement resources and increase the expenditure devoted to content due to the increased amount of programmes that would need to be purchased, or produced in-house, in order to fill the airwaves. In addition, the upgrade would represent substantial infra-structure expenditure for broadcasters. Without a clear rise in advertisement revenues or in public financing, digitalisation of terrestrial television would not be a feasible option. As television was already a mature medium, in terms of consumption and of coverage, digitalisation would have a huge impact on all agents involved, from broadcasters to viewers (Papathanassopoulos & Negrine, 2011: 41-2). As a result, digitalisation of this service implied mobilisation of efforts from the industry (transmitter and receiver industries), broadcasters and citizens.

Because of the coordination needed, DTV worldwide was led by governmental initiative and actively enforced, even by supra-national influences as in the case of the EU (Grimme, 2002: 238-239; Iosifidis, 2011). Ironically in times of liberalisation and free-market paradigm, as noted by Des Freedman (2008: 183), regulators had to adopt an interventionist approach and, as the analogue service will eventually be switched-off, oblige every citizen to upgrade in order to continue to receive terrestrial television. Even in the USA, where the free-market approach reigns, the FCC mandated in 1997 that the ten largest metropolitan areas should be digitally covered by 1999 (Grimme, 2002:231). During the year 2000s, DTV was rolled-out in several countries, including our three case studies. The latest evolution in DTV was the incorporation of HDTV which is already taking place in some countries such as in France, New Zealand and Brazil.

¹⁴ Multiprogramming is the carriage of multiple digital channels in the same 'space' (frequency slot) of one analogue channel. That is the principle used to multiply the number of channels in FTA. See Annex 2 for more technical details on digitalisation.

One decade into the new millennium, all three main broadcasting technologies, terrestrial, cable and satellite, are digital and are levelled in terms of technical quality. All three can offer HDTV and high quality sound. While DTV has the advantage for customers of being mainly a free-to-air service,¹⁵ cable and satellite offer the advantage of having a bigger capacity. Both the latter can offer hundreds of channels in comparison to dozens on DTV. As remarked by several scholars, including Starks (2007: 23, 80) and Hart (2004:185-6), the increase in the number of channels allowed by DTV was one of the objectives envisaged by policymakers in order to offer to viewers alternatives to paytv platforms.

One of the consequences of digitalisation and of the adoption of multiprogramming in FTA DTV, with direct relation to this thesis, is that more content is needed. Therefore, on the one hand, multiprogramming could be adopted by policymakers as a form of inducing competition and generating more national content. On the other hand, digitalisation increases the pressure on broadcasters' finances. In addition to that, digital convergence also implies that content can be accessed by other means, diminishing the importance of traditional broadcasters. Different telecommunication services, wired or wireless, have also become capable of delivering content after digitalisation. These new agents are the focus of the following section.

2.2.2 Telecommunication companies entering audiovisual distribution

With the digitalisation of services, the major new entrants to broadcasting, or more specifically to distributing audiovisual content, are the fixed telephony operators, with some activity of mobile operators, especially in the so-called 'branded entertainment' (Chandra, 2004: 92-3; Grainge, 2012; Gruber, 2005: 209; Pauwels & Burgelman, 2003: 64-5; Wang, Tjondrongoro, & Liu, 2007: 310-21). At this point it is important to note that the entrance of telecommunication companies into the broadcasting field is not a new phenomenon brought by digitalisation but can be traced back to the 1920s, when the American telephony company AT&T owned broadcasting stations, or even earlier on when Western Union (a former telegraph company) had an exclusive commercial agreement with Associated Press since the nineteenth century (McChesney, 2004: 35-6; Mott, 2000: 491). It

¹⁵ Nonetheless there are also subscription channels within the DTV platform.

seems that telecommunication companies always had appetite for other activities. However, in current times digitalisation elevated the integration and instantaneity to a different level, as we will see as the chapter develops.

Telephony networks, like broadcasting, also needed to be digitalised for the delivery of audiovisual content. The old copper wires were only capable of transmitting at low speed, less than 56 Kbps (kilobytes per second), which was unsuitable for video signals (Bhunja, 2006: 70-3). Telephony incumbents thus boosted their copper lines adding ADSL (Asymmetric Digital Subscriber Line) broadband connection in order to increase the speed (or bandwidth) needed (Keen, 1997: 345). With that technology, telephony companies could offer bandwidth of more than 1Mbps, being able to deliver VOD and IPTV (Internet Protocol Television) services (Jack, 2007: 827).

Wireless operators also became digital, but using different technologies depending on the kind of service offered. Mobile operators use different standards depending on the platform and suppliers, but all high speed digital technologies capable of delivering audiovisual content are categorised under the label of 3G (third generation networks) or newer (Kumar, 2007: 113-6). Other wireless technologies are WiMax (Worldwide Interoperability for Microwave Access), WiFi (commercial acronym for wireless local area network) and mobile TV. While WiFi and WiMax are basically broadband networks, mobile TV has different alternatives for its operation. In terms of business models, signals can be originated by local broadcasters, as in the case of the Nippon-Brazilian DTV standard ISDB (Integrated Services Digital Broadcasting) or by a dedicated nation-wide mobile TV operator, as in the case of the technology adopted in the USA, *MediaFlo* (Kumar, 2007: 4, 400).

All the technologies described above may be used either to create a proprietary network for the delivery of audiovisual services, such as a dedicated IPTV (Internet Protocol Television) service, and therefore, these telecommunication companies act as broadcasters, or may simply be used for delivering a connection point for users to connect to the internet. In the latter case, viewers can gain access to audiovisual content from other sources than broadcasters. These new models of television viewing are named VOD or non-linear (Scriven & Lecomte, 1999: 131). Content

accessed from the internet can be paid for (in which case can be categorised as a broadcasting service, see Helberger, 2007: 80; Valcke & Stevens, 2007 for details) or free and, of course, legal or illegal.¹⁶ As a result of those various modes and technologies, several technologies compete for the delivery of audiovisual content. Therefore, with regards to this thesis, communication policies have to acknowledge that possibility and consider telecommunication and internet-only companies as active agents in the audiovisual industry chain and take them into consideration when designing audiovisual policies.

All those digital networks can be seen as part of a global infra-structure for the access (from users' point of view) and delivery (from companies' point of view) of content. Currently, industries that were born half a century apart from each other are now regarded as intertwined. As remarked by Yoffie (1997: 160) telephony, which started in the late 1890s, television, from the late 1930s and personal computing, from the 1980s, are currently highly interdependent and interconnected. However, the extent of the substitutability or of complementarities between services and devices can indicate to which degree digital convergence is a reality for consumers, and how important it is for the companies involved (Greenstein & Khanna, 1997: 203-5). It is not the purpose of this thesis to comprehensively evaluate digital convergence. However, as the current reality shows us that users have a myriad of devices and web sites and dozens of communication services, my interest lies in evaluating how the policies that have enabled digitalisation and the multiplication of media outlets will affect the production and distribution of national content. In the search for that understanding, I will now direct the discussion to how, and to what extent, media and telecommunication services are converging in the views of scholars, and how it affects national content.

2.2.3 Convergence of services

The final outcome of digital convergence is hard to predict. As Longstaff (2002: 141) classified, visionaries of digital convergence visualise three different outcomes for this process: the creation of

¹⁶ The legal issue is one of the biggest concerns brought by the digitalisation of the media and media producers, and rights owners are trying to impose new legislation in order to restrict illegal downloading practices. Although this is not a focus of this thesis, it is an aspect of huge debate in several countries with the approval of new laws in France in 2009 and in the UK and Ireland in 2010.

a 'big pipe' (one network delivers all services), a 'big box' (one electronic appliance for all services) or a 'big company' (providing all services and appliances). If the outcome is uncertain, clearer is the fact that with the aid of digitalisation, communication networks became multifunctional and telecommunication companies started to commercialise various services using the same network (Ciciora, 2004: 229; Singh, Raja, & World, 2010: 9-10). This multiple offering of several services by the same company is a phenomenon that the industry refers to as technological convergence, digital convergence or simply convergence. The commercial jargon moreover refers to those multiple offers as *triple-play* or *quadruple-play* (Craveur, 2010: 16; Shukla & Hegde, 2007: 154).¹⁷

The obvious advantage for the operator in offering bundled packages is the immediate increase in the ARPU (Average Revenue Per User) when the same user signs to additional services (Shukla & Hegde, 2007: 158). For the consumer the palpable benefit is dealing with one communications provider only (one bill, call centre, service and so on) and there is also the possibility of being more economic. However, the biggest driver for the escalation of converged services is the competition allowed by the liberalisation of both telecommunication and broadcasting services (D'Haenens & Saeys, 2001: 125).

When digitalisation (and corresponding regulation) enabled cable companies to offer telephony and as a result, telephony companies started to lose clients, the latter started to digitalise and to increase the speed of their internet connections (leading to broadband) in order to be able to offer paytv services as well (Larouche, 2000: 328; Pagani, 2003: 65; Winder, 2001: 78). Satellite companies also started to offer telephony by offering tiered unbundled lines (from incumbents) to their existing customers (Bachelor, 2010).¹⁸ New technologies, such as WiMax, PLC (Power Line Communication), FTH (Fibre to Home) and 4G (fourth generation network of cell phones),¹⁹ are

¹⁷ Triple play is when the company offers three services for their customers: fixed or mobile telephony, internet and paytv. Quadruple play is when the bundle includes four services, fixed and mobile telephony, internet and paytv.

¹⁸ Unbundling (of the local loop) is a technique (or modality) where a new operator leases the copper line - the so-called last mile, from the telephone's exchange central to the user's premises - from the incumbent and offers a telephone line to the customer. The user is still using an incumbent copper line but being customer of another (an entrant) telephone company.

¹⁹ PLC (Power Line Communication) is a technology that enables the transmission of data, and thus providing broadband connection through the same power cables that supply electricity to the homes. FTH (Fibre to Home) is the usage of fibre optics in the last mile, delivering fibre directly to customers' premises

constantly being developed and it is reasonable to infer that competition between services will remain in the future and that established technologies will continue to be continuously challenged by technological evolution.

Despite repeated claims by commercial companies about the arrival of digital convergence, there is considerable debate as to what extent that process has become a reality for users and broadcasters and how it challenged audiences, businesses models and regulations (see for instance Barwise, 2010; Steemers, 1997; Storsul & Syvertsen, 2007; Syvertsen, 2003; Wheeler, 2004). Chapter 8, providing the market analysis of the case studies, will give some indication of the stage of that trend. For now, it is important to highlight the expansion of telecommunication operators towards the distribution of audiovisual content. Telecommunication conglomerates and paytv operators are allying with content producers in order to offer customers integrated packages. Audiovisual producers and traditional broadcasters, on the other hand, are not offering telecommunication services as additional offers. This may be explained by two major interdependent causes. First, regulation, by limiting the scope of action of PSB (Donders & Pauwels, 2008; Enli, 2008; Michalis, 2002; Steemers, 1999; Van den Bulck, 2008), as will be seen in more detail in Chapter 3. Secondly, economics. Telecommunication companies are simply bigger than broadcasters (D'Haenens & Saeys, 2001: 125; Nihoul, 2004: 381-9), as the market review conducted in Chapter 8 will also indicate.

As far as the regulatory restrictions are concerned, it is important to point out that, as discussed in Chapter 1, the liberalisation of telecommunication and broadcasting follows a global liberal agenda of introducing competition into those services. Alongside this tendency occurred the relaxation of ownership rules which permitted the creation of vast media conglomerates. As a result, entrant telecommunication companies were allowed to deliver virtually any kind of service.²⁰ In that sense, paytv operators are now telecommunication companies and not only (or mainly) broadcasters. On the one hand, the PSBs, the only (purely) broadcasting companies that could have the financial strength to compete in the telecommunication sector, were restricted by only being allowed to

which enables very fast broadband connection. 4G is the fourth generation of mobile communication, not a commercial service yet and as for 2011 still at the specification stage.

²⁰ Entrants are the telecommunication companies that were set up to offer competition to the incumbents, the former monopolistic telephone companies.

deliver broadcasting and by being prevented from engaging in anything that could be “delivered by the market” (Storsul & Syvertsen, 2007). Complaints of other operators, mainly paytv, about the BBC’s Iplayer and project Canvas illustrate those pressures (Humphreys, 2009a; Sweney, 2009)²¹. On the other hand, in the UK, paytv operators, due to the ‘must-carry’ rules, are able to use PSB channels on their distribution platforms, which increase the attractiveness of their packages without having to pay for the content.²² Even so they claim it is a burden (Michalis, 2002). PSBs still suffer the pressure from paytv operators who aim to reduce the formers’ importance, as this speech from a News Corp (Sky) director demonstrates:

... The land grab is spear-headed by the BBC. The scale and scope of its current activities and future ambitions is chilling.
 Being funded by a universal hypothecated tax, the BBC feels empowered and obliged to try and offer something for everyone, even in areas well served by the market...
 We must have a plurality of voices and they must be independent. Yet we have a system in which state-sponsored media – the BBC in particular – grow ever more dominant.
 That process has to be reversed.
 If we are to have that state sponsorship at all, then it is fundamental to the health of the creative industries, independent production, and professional journalism that it exists on a far, far smaller scale (Murdoch, 2009).

The market tendency of offering integrated packages indicates that the provision of audiovisual content is key for the expansion of telecommunication companies and increase in profits. According to Gascon (2009), in four out of six European countries that he studied, television services accounted for the highest revenue shares of bundled packages.²³ It is reasonable to infer that in countries where broadband and telephony are mature services, the incorporation of audiovisual content is the obvious route to increase revenues. An example of this tendency is the arrival of media giant Vivendi in Brazil which acquired, in 2009, the Brazilian entrant telephony company GVT (Sampaio, 2010).²⁴ The acquisition was a strategic movement both for the French company, which could thus enter a big and expanding economy, and for the Brazilian operator who could not offer convergent packages because of lack of access to audiovisual content.

²¹ Iplayer is a BBC video-stream internet tool that allows the access of content broadcast during the last week. Project Canvas is an initiative in collaboration with other companies and broadcasters in order to develop Youview, an internet-television standardised platform.

²² Must-carry rule is the legal obligation of cable and satellite (the latter to a certain extent) operators to distribute local television channels to their customers. For instance, in the UK BBC1 and 2, ITV1, Channel 4 and Channel 5 have to be offered to all subscribers.

²³ Germany (94% of the revenues were credited to paytv services), Sweden (79%), France (87%), Austria (48%), UK (35%, telephony 36%), Spain (28%, telephony 50%).

²⁴ As will be discussed in more detail in Chapter 8, Vivendi is the owner of Canal Plus, the third largest broadband provider in France and a major global media group.

Thus, digital convergence not only enabled new opportunities for telecommunication companies but also blurred the frontiers of formerly different services. Most important for the theme of this thesis, national broadcasters, the biggest producers and distributors of national content, now suffer the threat not only from global media companies but also from national and international telecommunication providers with revenues measured on a different scale. Therefore, if audiovisual and telecommunication regulation continues to be pushed towards liberalisation, regulators have to take into account those differences in economic power. Consolidation between both spheres could jeopardise national production and hamper diversity, pluralism and national identities.

Having exposed how the technological developments were incorporated into a new digital mediaspace and the implications this has on national content, in the next section I will explore scholars' works on how digitalisation has transformed the political economy of the audiovisual industry and the strategies developed by media corporations in times of digital convergence.

2.3 The political economy of the audiovisual industry

In order to better understand the debates on the economic implications of digital convergence to the audiovisual industry and the production of national content, I will divide this section into four parts. First, I will show the discussions on the global consolidation of the media industry and how it created conglomerates with considerable economic resources for generating content. Secondly, I will explore the different activities of the audiovisual industry and thirdly, the views on how the media industry distributes and finances the production of content. Lastly, I will address observations on the impact of digitalisation and globalisation on national producers.

2.3.1 Consolidation of the global audiovisual industry

As discussed in Chapter 1, the 1980s onwards were times of liberalisation for broadcasting. The causes of this momentum could be found on the Western coast of the North Atlantic. The neo-liberal American government led by Reagan, a known former Hollywood actor, nominated several business oriented regulators in the regulatory agency FCC (Croteau & Hoynes, 2006: 71; Kunz,

2010). Subsequently, many existing rules were relaxed and eliminated, thus allowing for more concentration (a single conglomerate could own more broadcasting channels nationwide and locally) and verticalisation of the audiovisual industries (a studio could own a broadcasting network and vice-versa).²⁵

As claimed by Kunz (2010), Croteau and Hoynes (2006: 71), Doyle (2002: 90-2) and others, the relaxation of the so-called 'finsyn' rules (according to which broadcasters had to buy content produced from independent companies) and ownership regulations, allowed the excessive concentration of media services in the USA with consequences worldwide.²⁶ Although the market analysis, objective of Chapter 8, will discuss this matter in more detail, it is important at this point to highlight one important consequence of that regulatory move.

After the relaxation, American studios and air broadcasters started to merge, resulting in what came to be known as the 'big-six': Time Warner (approximate annual revenues, in 2006, of £24 billion), Disney/ABC (£18 billion), Viacom/CBS (£15 billion), Twenty Century/Fox/NewsCorp (£14 billion), Bertelsmann (£12 billion) and NBC/Universal (£8.7 billion) (Blumenthal & Goodenough, 2006: 129-49).²⁷ Apart from Bertelsmann, the other companies, also known as 'big five', are based in the USA.²⁸

As Blumenthal and Goodenough (2006: 126-8) explain, those ventures follow the same common formula: a Hollywood studio source for feature films and series, an American broadcasting network,

²⁵ This control, where the same company owns or has financial interests in different stages of the audiovisual industry chain, from production to distribution (and sometimes exhibition) is called vertical integration or verticalisation (Turow 2009: 70).

²⁶ The 'finsyn' rules prohibited broadcasters to have financial involvement with the commercialisation of content produced by independent companies in other markets, besides the purchase for airing in their own network.

²⁷ Original figures in US dollars: \$42, \$31, \$26, \$24, \$20 and \$15 billion respectively. I used a \$/£ 0.58 currency conversion rate obtained from www.xe.com website (accessed on 15/02/2011). The list of the top global media companies is different in recent times. Sony, for instance, is top on the ranking of global revenues since 2007 according to the European Audiovisual Observatory. Please see Chapter 8 for more details.

²⁸ Put into the perspective of our case studies, the British BBC is financed by £4.6 billion and TF1 (French main commercial broadcaster) and Organizacoes Globo (Brazilian main media group and producer of the Rede Globo channel) had revenues of £1.8 and 1.7 billion, all in 2006, respectively (TF1, 2007, Sandes, 2010, Werzbitzki, 2010, LaFarge, 2010: 274, Paoli-Lebailly, 2010). Same sources reported £2.2 billion in 2008 and £3.1 billion in 2009 for TF1 and Organizacoes Globo respectively. Fluctuations are also due to currency exchange rates variation.

a paytv network and global presence. Or, as Potter (2012) remarks, those companies own pan-platforms assuring global consumption of cultural products. This pattern is replicated by other transnational media conglomerates such as Vivendi (for other examples see Humphreys, 2009b: 208; Thussu, 2007b: 90). This consolidation, as discussed in Chapter 1, has obvious consequences for media plurality and directly affects the production of national content. In order to better understand how this global verticalisation affects the various stages involved with the production and distribution of national content, in the next section, I will present how scholars divide the different activities of the audiovisual industries.

2.3.2 The television industry chain

Goldberg (1998: 12-3) suggests dividing the audiovisual industry into five activities: content providers; service producers (as broadcasters); network builders; network operators; and access applications and site equipment providers. For the purposes of this thesis, however, this categorisation is too broad and as I am concerned with the production of content, some parts of that chain, such as network builders, suppliers or manufacturers, will be of secondary importance. Griffiths (2003: 5) divides the industry into the following categories: ideas, rights and talents; programmes; channels; platforms; and viewer. This model is very similar to the one presented by Ofcom shown in Figure 1.

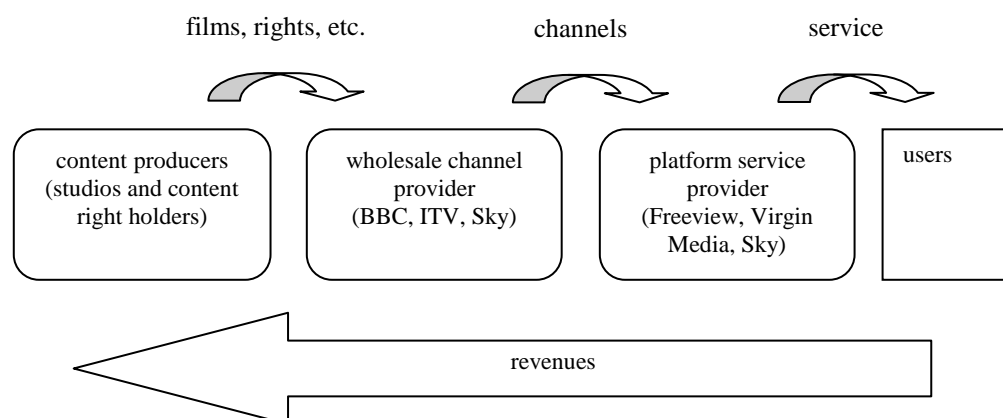


Figure 1 – Audiovisual chain in the view of Ofcom (2007b: 7)

As can be seen in Figure 1, viewers (users or subscribers) interact with the last part of the chain as they receive the signals from the platform service provider (or distributor). It is the platform providers that select and negotiate the rights with the wholesale channel providers in order to include the channels in the packages offered to users. Those providers (or broadcasters), in turn, negotiate with rights holders and content producers the programmes that will fill the schedule of their channels. Programmes may be produced in-house by broadcasters or be bought from independent producers. The latter may also produce programmes commissioned by the broadcaster. Content producers and rights holders, located at the beginning of the audiovisual chain, are sometimes the same company. They produce the audiovisual content and negotiate its distribution on the different distribution windows.

At this point it is important to expand on the concept of independent producers. As a general rule, producers are independent if broadcasters or major studios do not have financial interests in these companies (Turow, 2009: 477). As Ellis (2000: 151-2) remarks, originally, independent producers were regarded as small business crusaders, representing socially marginalised voices and production companies without editorial interference. This 'romantic' view has changed though. Currently, certain British independent producers have reached the category of 'super-indies' becoming global players who trade their output throughout the world (Chalaby, 2010). Returning our analysis to the other segments of the audiovisual chain, there are other providers that play important roles in digital platforms.

Griffiths (2003: 60) also includes in the audiovisual vertical chain the EPG (Electronic Programme Guide) and interactive services providers. In fact, interactive services and EPGs are a key element of control in digital systems. As Starks (2007: 101) recognises, the EPG, both technically advanced and user-friendly, was a very important factor for the success of Sky in Britain. For public broadcasters the EPG is also important, as an EPG display or format may influence viewers' decisions (Harvey & Tongue, 2004). The *Youview* VOD platform under development by British main broadcasters is reportedly delayed because of disputes around the functionalities of its EPG (Barwise, 2010; Whitfield, 2010). As traditional broadcasters are the main deliverers of national

content, policymakers have to take special care to EPGs when designing broadcasting policies in order to assure visibility to those broadcasters in digital systems.

For the purposes of this thesis and especially for the designing of an appropriate toolkit for the promotion of national content, I will divide the audiovisual chain between producers, broadcasters and distributors.²⁹ In that sense, vertical integration is referred to as companies having interests in all those three stages and horizontal integration is related to the ownership of different media outlets (for further discussion on those concepts see Croteau & Hoynes, 2006: 100; Turow, 2009: 209).

Another economic aspect policymakers must take into account is how audiovisual content is financed and distributed and how integrated media companies benefit from digitalisation.

2.3.3 Distribution windows and audiovisual financing

The audiovisual industry has several characteristics that differentiate it from other sectors of the economy. Amongst them, the unlimited reproducibility, also a feature of other digital industries, enables significant economy of scales for the owners of content distribution rights. Big media conglomerates, as they have access to global distribution chains, can amortise the production and distribution costs worldwide (W. J. Potter, 2010: 106; Vogel, 2010: 94). As Walter Benjamin already remarked in 1936, after sound films had been introduced (2002: 123):

The technological reproducibility of films is based directly on the technology of their production. This not only makes possible the mass dissemination of films in the most direct way, but actually enforces it. It does so because the process of producing a film is so costly that an individual who could afford to buy a painting, for example, could not afford to buy a [master print of a] film. It was calculated in 1927 that, in order to make a profit, a major film needed to reach an audience of nine million [Sound films] consolidated new capital from the electricity industry with that of film. Thus, considered from the outside, sound film promoted national interests; but seen from the inside, it helped internationalize film production even more than before.

Nearly eighty years later that claim is still valid. The size of the American market, the global audiences and the other amortisation possibilities, which I will discuss next, provide big media

²⁹ For the purposes of this research I include EPG and other interactive services as integrating parts of the broadcasting services which are eventually viewed or subscribed by the final user.

groups with enormous revenues, reducing the possibilities of independent producers to compete (Blum, 2001: 330). National producers that are not allied to alternative distribution chains or that do not export their works, instead, must finance production costs with a smaller distribution chain. The global circulation of audiovisual products, the need for having content produced locally and the naturally consolidating characteristic of this capital intensive industry explain why media conglomerates hold interests in virtually all segments of the audiovisual industry. With the rise of the internet, the consolidation process also started to include agreements with the new media and computing firms (Chambers & Howard, 2006: 364; Croteau & Hoynes, 2006: 90). As a result, the internet cannot be regarded as a certain haven guaranteeing appropriate distribution for national content either (also see Chapter 1).

The enhanced horizontalisation of the media allowed by digitalisation also enabled the creation of a wide range of related products that users can access by using different services. Normally explored in sequence, these distribution (or exhibition) windows can be resumed, although not exhaustively, to those shown in Figure 2.

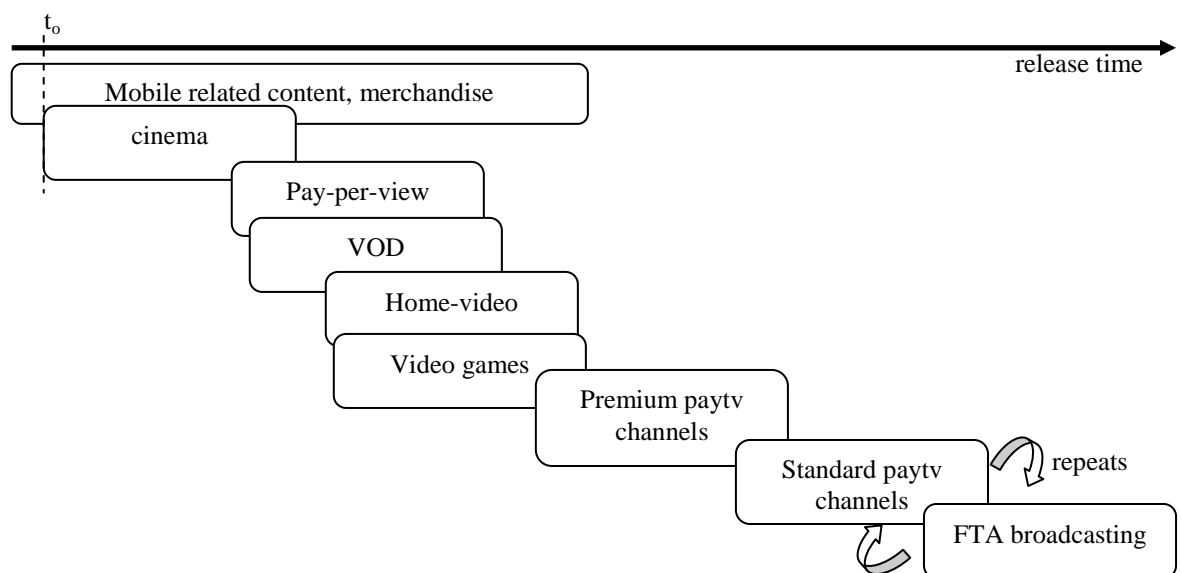


Figure 2 – Exhibition windows (adapted from Albarran et al., 2006: 483)

The duration of these windows varies. In the case of American productions: from four months for cinema exhibition; one to three years for American cable; up to two years for foreign markets and

up to six years for broadcasting (Miller, Govil, McMurria, Maxwell, & Wang, 2005: 306). The revenues generated by those additional exhibition windows are extremely important nowadays. Groening (2008) reported that, actually, cinema exhibition is now a non-lucrative window and, that the big media corporations generate more revenues from the other outlets. By owning different companies, global media achieve significant economies of scale, not available for most of the local producers and broadcasters, impacting on the production and distribution costs of content.

Important to this research, this 'windows' proliferation has also a negative effect for independent national content. Brazilian filmmaker 'Caca' Diegues (2003: 27-8) explains that as more channels (and media outlets) demand more films (among other content), a higher number of films produced diminishes their screening period in the cinema. He continues that unless they are major hits, films are screened in short runs in the cinema achieving 40% of their total revenue from the first week. Another strategy that reduces the screening possibilities of independent productions is the 'wide opening', where a large number of screens are used for the launching of blockbusters. According to Grant and Wood (2005: 76-8) major studios use this technique for maximising the effect of marketing and to catalyse attention, inducing a 'herd behaviour' in viewers. Independent producers do not have the same financial strength.

Although it is not the purpose of this thesis to examine comprehensively the market strategies of transnational global media conglomerates, in order to understand the extent of the economic power that can be exerted by them and the consequences this may have on national production, it is worth examining some additional examples on how those companies finance and enhance their dominant position.

Another strategy often used today for financing the production of programmes is 'branded entertainment', which includes 'product placement', where a company or a product is associated with a programme less intrusively than with advertisements (Turow, 2009: 647). With 'product placement' a manufacturer finances the production of a programme in order to have their product featured on screen, such as in the case of the cereal *Kellogg's* in the American sitcom *Seinfeld* (Castle Rock, 1990-8) and of *FedEx* in the film *Cast Away* (20th Century Fox, 2000) (ibid: 199).

Because of the vast distribution power of big media groups, it is more likely that manufacturers prefer those companies to place their products, leaving smaller producers with smaller-sized advertisers to increase their production budget.

If global media companies developed the exhibition windows scheme to exploit their productions to the maximum, and often use 'product placement' to increase revenues, they also use the so-called 'Kellogg's strategy' in order to impose their own channels and diminish competition. Griffiths (2003: 51) explains that this tactic was initially used by music channel MTV and consists of launching more and more specific music channels to keep rivals out of the music territory.

Furthermore, paytv distributors incorporated what journalist and writer Chris Anderson described as the 'long tail' concept which he synthesised in the following phrase in his manifesto *The Long Tail* (2004):

Forget squeezing millions from a few megahits at the top of the charts. The future of entertainment is in the millions of niche markets at the shallow end of the bit stream.

By that concept, several specific-themed channels are created, each of them viewed by small audiences. But, in total, the 'long tail' of channels achieves a significant market share comparable to those of individual main channels. In addition, by targeting nearly all audiences, distributors increase the attractiveness of packages. This approach may be regarded as stimulating audiences' fragmentation and favouring 'narrow'casting (Medoff & Kaye, 2010: 87). One consequence of this multiplication of the number of channels is the increased demand that they create for the production of more content, as discussed in Chapter 1.

In summary, as a result of these various financing techniques, audiovisual products owned and well exploited by media giants can be commercialised at a fraction of the production cost of an independently produced film or television programme. As an example, Diegues (2003: 31) claims that, in Brazil, American films are acquired by broadcasters at values as low as 3% of the average cost of a Brazilian production. This explains why feature films produced by media giants can cost hundreds of millions of dollars to produce while the biggest national hits produced by smaller and local groups have only a fraction of those budgets. De Vinck and Pauwels (2008: 291) exemplify

those discrepancies by showing that while the average film production cost of a US major was US\$63m, those from the UK and France were US\$13m and US\$23m, respectively. During the next section I will present the academic works that further delve into the impact of global media on national content producers.

2.3.4 Global media and national production in times of digitalisation

The different financing and commercialising techniques enhanced by digital convergence may represent a challenge for the competitiveness of national producers. However, it should also be noted that the size of the internal market is also important for achieving a well developed national audiovisual industry. This fact was noticed before digital convergence and even before liberalisation. Nordenstreng and Varis (1974: 54), while conducting a report to Unesco, analysed the flows of content in the television industry and arrived at this surprisingly still fresh conclusion:

It can be said that, in purely statistical terms, almost half of the self-sufficiency in programming is explained by three factors: population size, number of TV sets per 1000 inhabitants, and exports' share of the GNP (in this order of importance). The more population, the more TV sets and the less the share of exports in the GNP, the more self-supporting a country tends to be in its TV activity.

The logic beneath this economic analysis still remains the same in times of digital convergence. The number of TV sets (now the number of electronic devices capable to access content) and the relative number of imports (in comparison with national production) still indicates the size of the internal consumer market. Therefore the size of national audiences, advertising market and financing availability for national producers still determines the vitality of each country's national production. This reality remains unchanged in times of digitalisation. As the academic Peter Grant claimed in a public hearing at the House of Lords (2010), only the USA has an internal market that can support the production of high cost drama. In his view, in a country with a population of over three hundred million people, American producers can rely on the internal market and do not depend on subsidies or regulations in order to have content produced. Thus, after exploiting the internal market, American productions can be purchased abroad at a fraction of the cost of a local drama. In his view, the success of those productions has only to do with economics, not with popularity or quality (ibid). Diegues (2003: 28), while discussing the Brazilian case, also remarks

that in order to be considered by film distributors, producers have to offer quantity and diversity, requiring from them strong economic power. Grant and Wood (2005: 30) add that to have a vigorous domestic industry, not only critical size is needed but also a holistic supporting environment. What the economists call 'thick market', this environment includes fostering the establishment of creative clusters and audiovisual suppliers in specific cities which, in loop, act as attraction poles for more investments from the audiovisual industry (ibid).

There are other factors that influence the prices of programmes though. When programmes are exported, they suffer the effect of the so-called 'cultural discount'. The reduction, directly related to the concept of cultural relevance discussed in Chapter 1, is a loss of cultural value of the content because, in a different culture, these programmes will not be fully appreciated (Selznick, 2008: 19). This loss could lead to a smaller degree of success in other markets and, possibly, reflect in a loss in the content's commercial value (ibid). Collins (1990: 191) points out that language is the major cultural discount factor. Therefore, programmes which are not filmed in English have a bigger discount around the globe, even when dubbed. In order to minimise the discount, producers use the co-production tool, where elements of the importing country, such as actors or locations, are incorporated into the work (Selznick, 2008: 19), and often these films are shot in English.

Although the introduction of multichannel systems and the liberalisation of broadcasting may be perceived as an opportunity for local producers to export their production to virtually anywhere in the world, in the case of the biggest media market, the USA, the majority of the content broadcast still originates in the country. Kunz (2010), while analysing American television output concluded that there was "a total absence of finished programmes from outside the United States" and that the output was dominated by the big American corporations. Esser (2010), however, shows that format trade is responsible for a change in this scenario as increasingly more foreign formats, mainly from the UK, find their way into the USA.

At this point I would like to comment that according to some scholars, it was not only due to cultural imperialism, to the well established transnational distribution networks, financing techniques and purely internal market economics that American companies succeeded to export their audiovisual

products more vigorously than their European counterparts. According to Noam (1991: 21-2), American productions also managed to be exported worldwide due to the kind of content produced. The author points out that there is a "gulf between the tastes of producers and the audience" in Europe. In addition, while in the USA content is designed for broader audiences, he also indicates that the country is multicultural and multiethnic. Therefore, if a particular content succeeds in that market, it should also do well elsewhere. On the other hand, he explains that European content does not do well in the USA because it does not meet American audience requirements, such as technical standards and unfamiliar accents, in the case of British content, or unfamiliar situations such as in French comedies (ibid).

Independent of the reasons for the success of content produced by global media companies, countries around the globe recognise the structural and financial advantages and the market power of those global corporations and hence set a legal framework to foster their own domestic production. It is believed that, unless there is an intervention in terms of financing or in terms of regulation, it will be difficult for national producers to compete with globally produced content and to remain a choice for viewers in countries with liberalised mediaspace. In other words, as Nordenstreng and Varis (1974: 54) also concluded nearly forty years ago:

... the free flow of TV material between nations means in actual fact that only those countries with considerable economic resources have taken advantage of the freedom to produce, while those with scarce resources have the "freedom" to choose whether or not to take advantage of the material made available to them.

As I will discuss in Chapter 3 in more detail, several countries, even those with considerable economic resources, have adopted cultural policies for the protection and promotion of their audiovisual industries. These industries, while shaped by regulation, are also continuously affected by technological developments. With digitalisation, a film can be edited, animated, include special effects or even be entirely filmed in a different part of the world. This possibility, facilitated by digitalisation, may also have been exacerbated by protective policies from other countries. Producers may use other countries' financial benefits in order to lower production costs. For

instance, Miller et al (2005: 160-3) recognise that 'runaway productions'³⁰ are quite significant for the British industry since 1927 and that, in 2003, 102 of the 177 'British' films were 'runaway' and co-productions. The authors, citing a 2002 American Film and Television Action Committee report, claimed that this kind of outsourcing to several countries "drains" ten billion dollars from the American economy (ibid : 7). The authors conclude that foreign (from the USA's perspective) cultural policies managed to substitute imports and create jobs by implementing a "bourgeois subvention." They also suggest that instead of empowering "true" domestic productions, policymakers are encouraged to outsource Hollywood productions in a new international division of labour (ibid: 363-4). Important to this thesis, these views show that in a global and digital world, cultural policies and the introduction of incentives for the production of national content have implications for national audiovisual industries but they may also be used to attract global investments.

After highlighting for the reader the technological and economic consequences of digitalisation and of digital convergence for the production of national content, this chapter heads now to the conclusions.

2.4 Conclusions

Currently, in times of DTV, satellite, cable, ADSL, mobile and fixed communications, internet, *hot-spots*, video gaming and other technologies, communication companies launch increasingly more interconnected services. As this chapter has shown, there has been a continuous approximation between communication services bringing global media and telecommunication companies with significant market power to compete with national producers and broadcasters.

In the views of the scholars analysed in this chapter, in times of digital convergence the multitude of services and the multifaceted reach of global media groups may be sensed in all elements of the audiovisual chain. As this thesis is concerned with the regulatory framework for the production and

³⁰ 'Runaway productions' are often referred to as American productions developed for initial release in the USA but that are filmed or produced in some stage in another country. In the UK they are often referred to as 'inward productions'.

distribution of national content in current times, this contextualising chapter was necessary to understand the new dynamics of the new digital audiovisual market. Various views of media specialists were utilised to achieve this. How content travels from one horizontal and vertical activity to another, which financing techniques are available, and the differences between the existing digital services particularly in relation to economic and market power were discussed here, with reference to work in the area. Digitalisation has brought more than just different services and countless channels. It has also brought vertical, horizontal and diagonal integration on a global scale in the search for economies of scale and profits. It is in this scenario that national producers and PSBs have to survive and compete.

Adding to this panorama of the economic aspects involved in the production and distribution of national content, in the next chapter I will discuss scholars' perceptions of how political forces have shaped recent developments of broadcasting and telecommunication regulation. The chapter will show that regulators, either by fostering or by being pushed by market forces and technology, have attempted to achieve a dual mission. They have kept an eye on the continuity of the services, assuring universality and maintaining a certain space for the public interest, but also allowed and created new opportunities for newcomers and technological changes.

CHAPTER III

THE REGULATORY DEVELOPMENT TOWARDS DIGITAL CONVERGENCE

The politics of regulation nowadays often occurs in complex multi-level arenas, where some actors can play simultaneously at several levels. The goals of these multi-level actors are often obscured from observers who focus their attention on only one arena of policy-making (Tsebelis 1990 cited in Jordana & Levi-Faur, 2004: 23).

3.1 Introduction

Broadcasting legislation, as with legislation associated with other services, has continuously been adapted through time. History shows that new acts were passed not only to allow the introduction of new technologies but also as a response to market forces and demands. Since the beginning of broadcasting, national governments used the service for the promotion of national industries.

Scannell and Cardiff (cited in Gorman & McLean, 2003: 53-4) saw the start of radio broadcasting in the UK, in the 1920s, as an agreement between the government and radio-manufacturers for the creation of a market for selling radio apparatuses. Despite being often regarded as using broadcasting as a tool for promoting French culture, as highlighted by Hutchison (1999: 209-11) amongst others, France also promoted industrial interests as demonstrated by the launch of Canal Plus in the early 1980s (Kuhn, 1995: 180). More recently, in 2007, one of the main reasons for the Brazilian decision to adopt the Japanese DTV standard was because of the expected economic opportunity it would generate in the medium and long term (Bolano & Brittos, 2007: 176-7).

The discussion about whether the media should be unregulated, subjected only to market forces with no governmental interference or if it should be regarded as a different kind of industry, with regulations not only limited to services' technicalities but also to content, is ongoing. The cultural implications of broadcasting were already discussed in the first chapter, whilst the intertwined technological and economic aspects of the audiovisual industry were explored in the second. As already pointed out in those chapters, despite the controversy between liberals and interventionists, media is regulated to some extent in different parts of the world, normally according to the type of media, the historical institutions in place and the dominant political ideology. This third chapter, drawing on a variety of media policy scholars, will demonstrate the political and market forces that have shaped the changes in broadcasting and telecommunication legislation since the liberalisation of the 1980s and led to the implementation of protective measures for cultural products. The chapter will help the reader understand how regulation, within certain limitations, steers the development of communication services and supports the production of national content.

Before the chapter is outlined I would like to clarify what is meant by regulation. I will use the concept defined by Longstaff (2002: 33). The author describes regulation as being "any limitation on the choices of persons (individual or corporate) who control any of the components of a communication process." Therefore during this discussion I will not limit myself to regulatory instruments but will also include the political disputes between the different groups and nations with interests in the audiovisual industries.

In order to help the understanding of the implications of the changes in regulation, based in academic work in the field of media regulation, this chapter will initially show in section 3.2 how the liberalisation of broadcasting services changed the focus and the timing of the regulators' actions. As will be highlighted by work in the area, while in the 1980s and 1990s competition was fostered and digitalisation was promoted by frameworks focused on liberalising broadcasting policies, currently, stakeholders are increasingly concerned with regulating competition.

After grasping this new approach adopted by regulators, the chapter will then detail how the different communication services were affected by liberalisation and how this process influenced changes in policies regarding the production and distribution of national content. Following that logic, section 3.3 illustrates the changes in telecommunication regulation and how the integration with broadcasting services have been regarded by academics. Because the liberalisation of broadcasting and of telecommunication allowed transnational companies to compete with local broadcasters, protective measures for national content were introduced at regional and national levels. Section 3.4 is centred on how media researchers have analysed the international negotiations and pressures for and against the protection of national cultures. Section 3.5 shows that despite the level of protection agreed, at the national levels commercial media continued the strain on PSBs.

As this thesis is concerned with the production of national content and because films are important ingredients of television schedules, the relevant regulatory attempts for fostering both production activities will be discussed in this chapter. During the last sections I will discuss scholars' perceptions on the implemented cultural policies for the protection and promotion of national content, the so-called 'push-pull' policies. Section 3.6 will explore how scholars have assessed the content quotas for broadcasting services and cinemas and section 3.7 the existing cultural policies regarding to film production.

3.2 The new focus of regulation in the new millennium

A problem which arose with the blurring of the frontiers between the various communication services which followed liberalisation, and was increased with digital convergence, was how to identify, measure and control companies' market power and hence how to properly enforce competition (Goldberg et al., 1998: 14). According to Longstaff (2002: 49), when several networks were opened for competition in the 1980s, such as railroads and electric grids (besides broadcasting), everyone predicted more providers and lower prices, but few predicted a decrease in quality and consolidations. Perhaps even fewer people foresaw that originally different and separated markets and industries would converge in twenty years time and compete amongst each

other. For instance, a foreign electricity company providing broadband connection or a multinational bookstore offering films on VOD.³¹ Therefore the regulation that introduced competition and liberalised broadcasting in the 1980s and 1990s had to be adapted to cope with the new realities created by more companies competing for the distribution of audiovisual content.

As digital convergence increased, and because media groups have interests in several activities, services, such as FTA and paytv, could not be analysed separately anymore. Regulators thus concentrated on controlling the gatekeepers and the bottlenecks of the market (Gibbons, 2004: 59; Goldberg et al., 1998: 21). Gatekeepers, as Goldberg et al (ibid) define, are institutions that “prevent access to the services of competitors”. For instance, a gatekeeper can occur in the form of a broadcaster not buying or scheduling programmes from a particular independent company, or a film distributor not dealing with works from a particular director. In times of digital convergence the authors (ibid: 127) list the broadcasting technological bottlenecks as being the “conditional access systems [paytv platforms], subscription management systems and EPG.” But bottlenecks can also be related to the access to DTV platforms or other incumbents’ infrastructure, also known as essential facilities (Levy, 1999: 80; Longstaff, 2002: 70), or be related to other content issues as will be discussed later on. Callanan (2004) considers that EPGs are crucial bottlenecks as they influence audience’s decisions, since users and distributors can customise channel listings favouring some broadcasters to the detriment of the others (ibid).³² Access to digital multiplexes (the distribution platforms of DTV) is also crucial for broadcasters and viewers, as the denial of access to some platforms may exclude particular audiences and regions from important channels and content, jeopardising the universality purpose of broadcasting (ibid). This change in the focus of regulation from liberalising and introducing competition to regulating bottlenecks and gatekeepers was followed by a shift in the timing of the regulatory interventions.

In principle, legislators and regulators can set overall services’ rules, from a set point in time (for instance the enactment of an act), anticipating situations. Those rules are so-called *ex ante*

³¹ Electricity providers may use the PLC (Power Line Communication) technology where broadband connection is provided by the same lines that delivers electricity to the houses. In another example of this trend, the (formerly book) internet retailer *Amazon* acquired in 2011 the company *LoveFilm* and is currently renting films by downloads which can be watched, for instance, with the help of videogame consoles.

³² Callanan reminds a disagreement in 2003 between the BSkyB and the BBC over the distributors’ EPG (the sides reached an agreement without regulatory intervention).

regulations. Alternatively, regulators can analyse the market's characteristics and companies' practices after a particular event and only then intervene proposing corrections (regulatory remedies) when applicable. Those methods are called *ex post* regulations. Normally *ex ante* tools are used for issues of structure and *ex post* for issues of behaviour (Scriven & Lecomte, 1999: 135). Typical examples of an *ex ante* approach are ownership rules, for instance preventing foreign ownership of the media, and of the *ex post*, the investigation of anti-competitive behaviours of a particular media company (Seabright & Hagen, 2007: 316). When a behavioural control finds a misuse of a market-dominant position, the regulatory agency may impose structural measures to correct the issue (Berger & Schoenthal, 2005: 7-10). Those policy regimes are often used in complementary terms. In fact, as Helberger (2004: 35) explains, *ex post* legislation alone is not advisable:

While *ex post* structural remedies might be a way to effectively remedy anti-competitive behaviour, this approach too has its disadvantages. Examples are the lack of guidance and legal certainty for the parties involved, and the uncertainties that are inherent in competition procedures as well as the time problem. Also, the decision to divest a successful enterprise is not easily taken, and in practice it can be very difficult of practical and political reasons to dismantle anti-competitive structures once they have been established. These problems could be adverted by preventing the creation of anti-competitive structures *ex ante*.

Many scholars, like Wheeler (2002, 2004) and Humphreys and Simpson (2005: 93), claim that currently in broadcasting there is a tendency of providing a pro-competitive, and increasingly *ex post*, regulation. Because of this concern of promoting competition, regulators, such as the EC (European Commission), when analysing mergers between the media and telecommunication sectors, assess if consumers' choices may be undermined in the case of the resulting media conglomerate holding too much of the most attractive content (Wheeler, 2002). That would be the case of creating a gatekeeper which would endanger competition (*ibid*). In fact, according to La Porte et al (2007), one of the major concerns of the EC is to promote the free market by mitigating possible gatekeepers in broadcasting, distribution and production activities. The authors claim that the EC's audiovisual regulatory efforts are focused on guaranteeing external pluralism.³³ Therefore, in the views of these scholars, the Commission, while pushing for competition, also recognises that the diverse production of national content still is one of the socio-cultural objectives of broadcasting

³³ During the first chapter I used the term plurality instead of external pluralism. For the purpose of this thesis both concepts are equivalent as they refer to the usage, by broadcasters, of programmes produced by multiple and independent companies.

services. However, Bustamante (2004) notes that the guarantee of external pluralism is increasingly difficult as regulators have to combine different actors, such as PSB and commercial broadcasters, with conflicting interests in an ever increasing commercial environment. As the author explains, while public broadcasters have stronger public obligations including the promotion of pluralism (by acquiring and commissioning from independent producers), commercial media tend to consolidate the agents involved, diminishing pluralism.

Another cause that may hamper pluralism is inherent to digitalisation. Seabright and Weeds (2007: 47) explain that due to the lower market entry barriers enabled by digital technologies, “rents [revenues] in broadcasting will increasingly come from control of scarce content rather than from control over means of transmission [or distribution]” which will tend to consolidate. By changing the traditional market bottleneck from transmission (an entire channel) to content rights (a particular programme, for instance sporting events), that situation may lead to different anticompetitive situations, and therefore pose a new regulatory challenge (ibid: 60-4).³⁴

The increased financial importance of content is regarded, by some, as an issue that should be better handled by regulators. Ofcom, is regarded as not having sufficient expertise and will to deal with the subject of content (Harvey, 2006). Critics of the French CSA, like Meirieu (2007: 87-8), claim that the institution does not deal seriously with the social implications of the content broadcast and is only concerned on “calculating the speech time of politicians” or placing violent American content late at night but not ensuring the broadcast of important programmes during prime-time. Michalis (2002) points out that the EC places too much emphasis on competition and is weak in dealing with issues of content. Ostergaard (1998: 104-6) remarks that this change is a consequence of digital convergence and suggests that regulators are shifting the social objectives of their policies to be more focused on industrial issues. These regulatory difficulties resulting from convergence are also addressed by Trappel (1998: 191-2), who attributes current regulatory difficulties to, among other issues, the augmented political influence of global companies.

³⁴ As will be seen on Chapter 6, broadcasting rights are increasingly the object of attention of regulators.

From this condensed account of how the regulatory concerns have changed after the liberalisation of the 1980s and 1990s, and in order to be able to properly identify and design regulations for the promotion of national content, it is important to retain two key aspects highlighted by various media policy scholars. First, as consolidation has blurred the boundaries of both services and companies, regulators are now focused on assuring customer choice, instead of re-regulating and re-defining new scopes and obligations for services. The main parameter currently used by regulators for assuring this consumer choice is the assessment of the external plurality in terms of broadcasters and distributors. The instruments for enforcing competition are regulating access to content and to distribution platforms, by avoiding the formation of bottlenecks, for instance in terms of distribution platforms, and regulating gatekeepers, as holders of attractive content. The second shift, but also a consequence of the first tendency to regulate for competition, is that policy stakeholders are avoiding interfering with the market and are increasingly using *ex post* analysis and proposing remedies only when considered necessary.

During the next section I will present the academic perceptions of how the regulation of the telecommunication sector changed with the privatisation of those services and with the introduction of competition, and how that industry and broadcasting became increasingly interdependent.

3.3 Regulatory changes in telecommunication

In times of digital convergence, when broadcasting and telecommunication services are interacting more so than ever with each other, it is important to look at the regulation of both sides. In this section it will become clearer to the reader that, as viewed by scholars, telecommunication regulation was adapted first for enabling privatisation, secondly for enabling competition and thirdly, amongst other issues and with particular interest to this thesis, for disciplining the access to broadcasting channels, the biggest distributors of national content.

While in the 1990s new channels and technologies were introduced in the broadcasting field, telephony was also under great transformation. The 1980s were times of privatisation of national incumbents and of countries' telecommunication infra-structures. The UK started this process by

partially privatising British Telecom in 1984 and by introducing competitors, or entrants, to telephony (Parker, 1998: 27-8). It was the end of the monopoly in telephony as it was the end of the duopoly of the BBC and ITV in the broadcasting service. When privatisation swept across other European countries, in France, due to unions' opposition and a governmental hesitancy (or fear) of losing control over their important asset, privatisation was postponed until 1997 (Thatcher, 2004). While British Telecom was wholly private by that year, by 2002, France Telecom was still 55% owned by the state (ibid). For the Western European countries, the push to privatisation was also driven at the supra national level.

Whilst the European Parliament was concerned with developing a strong audiovisual industry in times of globalisation, the EC and to a lesser extent the ITU (International Telecommunication Union) were pushing hard for the introduction of competition to telephony (Hopper, 2007: 62; Humphreys & Simpson, 2005: 148; Parker, 1998: 28). While global audiovisual groups were pressing for the liberalisation of broadcasting, technological developments, such as digitalisation, cable, fibre optics, satellite and mobile, introduced cheaper competitors to traditional telephony companies (Parker, 1998: 27; Wheatley, 1999: 145). These new alternative technologies rendered, for some, telephony networks' monopoly unnecessary and it was understood that prices could drop if competition was introduced into telecommunication (ibid; ibid). It was with the Green Paper on the *Development of the Common Market for Telecommunications Services and Equipment* of 1987 that the EC set the pace for the liberalisation of European telecommunication markets (Venturelli, 1998: 113). Five liberalising directives followed that initiative and the Full Competition Directive of 1996 dictated that the telecommunication market was due to be fully competitive by 1998 (OECD, 2000: 300).

On the other side of the Atlantic, Brazil followed those liberal recipes quickly. Struck by the State's lack of investment power and by high inflation rates, the former leftist president Cardoso (1995-2003) decided to follow the neo-liberal approach and to privatise several assets, including the telecommunications sector (Petras & Veltmeyer, 2003: 13-4). As a result of the privatisation process, the infrastructure was passed to foreign companies. The same companies that were partially or fully privatised in Europe had major investments in Brazil, such as Telefonica (Spanish),

Portugal Telecom, TIM (Italian) and France Telecom (OECD, 2007: 286-287). The same stakeholders had relevant positions on both sides of the Atlantic.

In Western Europe, after the introduction of competition and as digital convergence started to become more significant, in 1997 the EC submitted a Green Paper on Convergence in an attempt to approximate broadcasting and telecommunications regulatory regimes (Humphreys & Simpson, 2005: 126-31; Storsul & Syvertsen, 2007). However, due to strong opposition from broadcasters the consultation did not succeed and in its place a more modest Consultation on ICT (Information and Communications Technology) was launched ending in a Communication Review Paper excluding the subject of broadcasting (Humphreys & Simpson, 2005: 126-31). According to Storsul and Syvertsen (2007), the opposition was mainly due to the defense of PSBs. Drawing from the Norwegian and British examples, the authors noted that national governments regarded PSBs as:

the most flexible and appropriate instruments for realizing national digital ambitions. Private broadcasters, in contrast, neither have the capital nor are willing to take the risks involved in developing innovative content and services

Simpson, on the other hand, claims that the retraction of the Green Paper was also due to internal differences within the EC where the former Directorates for competition (DGIV) and for telecommunication (DGXIII) had different objectives than the ones from the audiovisual field (DGX).

In 2002, explicitly excluding any change in broadcasting services, the EC introduced a new regulatory regime for the telecommunication sector (Campbell, 2008: II/18-9; Lloyd & Mellor, 2003: 35; Van Eijk, 2003: 6).³⁵ The new framework was regarded as necessary because the transformation that followed the liberalisation of telecommunication and broadcasting sectors introduced, together with competition, highly verticalised companies which in turn could jeopardise the same competition they were supposed to create (Helberger, 2004: 28). As an example of the new directives, the Access Directive established “the obligation to provide conditional access on fair, reasonable and non-discriminatory terms” (ibid). Digital convergence was regarded as enhancing the conflicts of interests between distributors (defined in regulation as transport level),

³⁵ As Van Eijk remarked, the new package was meant to be technologically neutral and aimed to further liberalise the telecommunication market, allowing for more convergence but excluding explicitly any discussion about broadcasting and content. Besides the general Directive that sets the framework, the other instruments concerned to: i) the licensing scheme; ii) fair access and interconnection; iii) universal service obligations; iv) data protection and; v) competition.

which could also have interests as broadcasters, and other independent broadcasters (defined as service level) (ibid). The expansion of telecommunication firms into broadcasting was acknowledged as potentially dangerous for pluralism but would be analysed by *ex post* interventions, if necessary.

As digital convergence allowed the transmission of broadcasting channels by different telecommunication services, the rules concerning the access and distribution of those channels may be regarded as of increased importance. Initially restricted to 'must-carry' regulations, this set of rules was enhanced to also include 'may-carry' and 'must-offer' conditions. 'Must-carry' obligations are strongly linked to the universal aim of broadcasting and are widely held in Europe, although being challenged by digitalisation and digital convergence (Valcke, 2005: 31-2).³⁶ 'Must-offer' rules, where broadcasters have to offer their channels to be carried by distributors, were not enforced in many countries (amongst those that were, the UK and France) (Vogelsang, 2010: 154). 'May-carry' rules allow operators to distribute channels from different regions provided that the transmission does not clash with broadcasting rights acquired by local broadcasters (Helewitz & Edwards, 2003: 127). Despite Brazilian regulatory agency Anatel (Agencia Nacional de Telecomunicacoes) having analysed the other alternatives, Brazil (probably due to the influence of commercial broadcasters) only implemented 'must-carry' rules (Hoinoff, 2001; Pieranti & dos Santos, 2008).

At this point it is important to include in this discussion of telecommunication regulation one alteration of the broadcasting legislation triggered by the telecommunication sphere: the development of non-linear services. The proliferation of those new audiovisual services, such as IPTV, internet webcast and VOD, led the Commission to include that category of services in the ten year statutory revision of the TWF (Television Without Frontiers) 1989 Directive that occurred in 2007. The amended directive exempts websites that distribute user generated content but not those that offer a selection, or catalogue of programmes to paying subscribers, in other words a TV-like service on the web. With this rule, at the same time that non-linear services can be left in

³⁶ In the case of 'must-carry' obligations being in place, telecommunication operators have the obligation of distributing to their base of subscribers, all of the traditional FTA broadcasters.

the telecommunication 'world', regulators have implemented a clear clause for this separation. If those services start to behave like broadcasters, they will be subjected to broadcasting regulation.

As shown in this section, on the telecommunication side liberalisation forces prevailed, in general, without opposition from governments. Besides some initial reluctance from France, the countries analysed here opted for having commercial operators running telecommunications. FTA broadcasting, on the other hand, still has strong national groups as the national panoramas provided in Chapter 5 will show in detail. When the EC tried to eliminate barriers between both spheres, Member States strongly opposed this, mainly to protect their PSBs as indicated by media scholars. In Brazil, a similar reaction occurred and foreign capitals were restricted to the telecommunication sector only.

With the aid of technology and of a more liberal *ex post* regulation, the telecommunication sector increased their capability of offering audiovisual content and became more integrated with broadcasting. Consequently, those companies are continuously growing in importance and size. New "must-carry" and "must-offer" rules were enforced, and currently non-linear services may be subjected to regulation. As seen in Chapter 2, telecommunication services rely on audiovisual content, mainly produced by broadcasters, for increasing their revenues. Hence, with regards to the objectives of this thesis, a successful promotion of national content in times of digital convergence has to take into consideration that services other than broadcasting, mainly coming from the telecommunication and information technologies sphere, distribute audiovisual content.

In the next section I will discuss the academic research which analyses how world trade agreements and negotiations and European organisations have shaped transnational instruments of audiovisual regulation.

3.4 The development of the transnational legal framework for audiovisual content

Having shown the views on how telecommunication regulation was transformed due to market and political forces, in this section I will discuss how that same liberalising discourse was also active when promoting the free-trade of cultural products and weakening protective measures for national content.

International flow of content has been a matter of concern well before the liberalisation of broadcasting that started in the 1980s. Without going too far into the past,³⁷ it can be found in the report conducted for Unesco by Nordenstreng and Varis (1974) and in the works of Schiller (1985), Morley (1995) and continued in the last decade, in the works of Rixon (2006), Esser (2007), McChesney (2009), Straubhaar (2009) and Kunz (2010). As a consequence of the struggles faced by national producers and the cultural concerns raised by the airing of imported content, several nations tried to restrict the free influx of programmes and films and promoted the production of national content and channels. Those restrictions and incentives did not start with broadcasting though. Cinema received protection from national governments from the 1920s when Hollywood films started to ‘flood’ some countries of Western Europe. The French Minister of Fine Arts, in 1927 expressed his concerns by stating: “[W]e would soon be colonized by foreign motion picture interests if we do not do something about it” (cited in Ulf-Moller, 1998).

As discussed in Chapters 1 and 2, audiovisual services impact on national culture and identity and also are capital intensive. Therefore, national governments have devoted considerable regulatory efforts addressing both cultural and industrial aspects of that activity. However, to handle both aspects in a balanced way has proven to be difficult as regulation is constantly changing and new arrangements are regularly being proposed. Possibly, as Voon (2007: 67-8) remarks, the different approaches derive precisely because of that inherent dual characteristic of cultural products. As the author continues, there is a thin balance between cultural policy and protectionism. As will be discussed later on in this section, positive discriminatory cultural policy measures may be accepted in the international sphere and by multilateral institutions as long as they are also justified on

³⁷ Concerns with the introduction of media originated in other parts of the world can be traced back to the end of the Middle Ages with the rise of mass media as a printed material. See McQuail (2010: 24) for details.

economic grounds. In the case of the EC, regulators are struggling to balance the increasingly conflicting nature of promoting competition and economic competitiveness with the cultural aspects inherent to audiovisual products (Wheeler, 2004).

As discussed in Chapter 1, the contribution of audiovisual content to culture is acknowledged and has been a matter of serious international politics for some time. During the GATT (General Agreement on Tariffs and Trade) negotiations in 1993, a block of developed countries led by the USA and representing the interests of transnational media conglomerates, urged for the global liberalisation of commerce for all goods (Levy, 1999: 22). As a counter move, the French-Canadian-led block raised the principle of *l'exception culturelle* for audiovisual media products (ibid). The arguments to exclude audiovisual products from free global trade followed the justification of protecting national identity and culture (Voon, 2007: 24). The following quote synthesises the rationale used by those supporters nicely:

Culture is not like any other merchandise since it extends beyond commercial aspects: cultural goods and services convey ideas, values and way of life which reflect the plural identities of a country and the creative diversity of its citizens (Schneider & Bossche, 2008: 250).

After intense negotiations, cultural products were excluded from the free-trade agreement (Trebilcock & Howse, 2005: 637). Or, as Voon (2007: 25) remarked, the blocks “agree-to-disagree” on that matter. As a result of that ‘agreement’ national protective policies were allowed. Amongst the instruments cleared by this outcome were the quotas for European content such as the one from the TWF Directive.

The Directive, originally proposed by the European Parliament in 1989, was preceded, in the same year, by the Council of Europe’s European Convention on Transfrontier Television in what can be regarded as the first European broadcasting regulation that attempted to protect national cultures. The TWF however, can be traced back to the 1984 Green Paper on the Establishment of a Common Market for Broadcasting, or even further to the negotiations on the EU that culminated in the 1992 Maastricht Treaty (Schneider & Bossche, 2008: 251). The TWF went further than the cultural objectives established by the European Convention and might be considered as the most important single policy for the pan-European market (Sarikakis, 2005). With the aim of improving

the European audiovisual industries' competitiveness by creating more demand for their products, legislators of the European Parliament proposed European and independent content quotas for broadcasting (Besio, Hungerbühler, Morici, & Prario, 2008; Schneider & Bossche, 2008: 252). However, the quota system is considered to be weakened by the fact that US production firms with a basis in the EU, plus imported formats (but filmed locally), could be considered as contributing to European content (Waisbord, 2004; Wheeler, 2004). Chalaby (2006) remarks that the protection achieved with the TWF was, in fact, unnecessary as the premises of European culture being under threat of 'Americanisation' "have proven unfounded". Another strong critique of quotas is the fact that the defence of national products may protect low quality, albeit nationally produced, content and restrain consumer sovereignty (Kuhn, 2000: 294).

While the quota created a demand, a 'push' measure, for EU audiovisual industries, as a 'pull' instrument, the TWF was complemented by the creation of various funding initiatives such as the MEDIA (Incentives and Development Measures of the Audiovisual Industry) programme. The main purpose of that particular initiative was to promote the "dissemination of audiovisual works" in the EU (Collins, 2002: 17).³⁸ Currently in its fourth version, the programme, since the 1987 pilot, has invested over €1.7 billion supporting both the development and distribution of Member States' works (De Vinck & Pauwels, 2008: 289).³⁹ However, De Vinck and Pauwels (*ibid*) rightly remark that the amount is small when compared with other EU funded programmes. The authors quote Casado (2006: 55) who emphasizes:

It seems naive to think that with an annual budget of €80 million (the budget of some American super-productions), a programme can have any real impact on the audiovisual industries of 15 countries producing more than 600 films per year.

Returning our discussion to the transnational pressures, the truce that protective policies obtained from the GATT outcome revealed itself to be temporary, as the pressure for liberalising audiovisual commerce remained strong. As cultural products grew in importance in foreign trade, multilateral bodies, such as the WTO (World Trade Organisation) and OECD (Organisation for Economic Co-operation and Development), started to question whether national content policies were in fact

³⁸ The authors list the specific focus of the programme as being "training, preproduction, multi-lingualism of programmes, use of new [sic] technologies, distribution and commercial promotion, the creation of a second-market and easy access to venture capital" (*ibid*).

³⁹ According to the authors the current MEDIA 2007, which ends in 2013, has a budget of €750m.

illegal subsidies (Neil, 2006). Outside the EU, other national governments were also struggling with the consequences of the liberalisation of cultural trade. In the Canada-USA periodicals WTO dispute,⁴⁰ in 1997, the panel ruled in favour of the American interests but recognised that the decision was made based only on the analysis of the GATT rules for the commercialisation of goods, and that the aspects of protection of cultural identity were not under consideration (Schneider & Bossche, 2008: 12; Weber, 2008: 837). After the WTO favoured the USA in two more cases, against Turkey and Canada, in 1997 and 1998,⁴¹ the Minister of Canadian Heritage promoted a meeting in 1998 with 16 other countries in order to discuss alternatives for the maintenance of the cultural exception for the audiovisual industries (Aylett, 2010; Weber, 2008: 837-8).

Naturally, the appropriate multilateral institution which would 'shelter' those concerned with the effects of the excesses of the commercialisation of cultural products would be Unesco. In fact, as noted by Voon (2007: 66), Unesco's legislative activism has always been characterised by claiming the need of preserving spaces for all cultures of the world. In 2001, a Universal Declaration on Cultural Diversity (Unesco, 2001) was issued as a starting point for a broader convention that would set the legal grounds for national protective policies. In 2005, the vast majority of Unesco's member states approved the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Only the United States and Israel voted against it (Neil, 2006). The Convention ratified the cultural exception status of audiovisual products and gave power to nations to enforce protective policies for their own cultural products (Trappel, McQuail, Meier, & D'Haenens, 2011: 82).⁴²

As discussed in this section, antagonistic forces have influenced the current state of audiovisual regulation. On a transnational level, the GATT agreement was updated (without consensus), in 1993, and a Unesco convention was proclaimed (without the support of the USA), in 2005. On the

⁴⁰ "Canada - Certain Measures Concerning Periodicals" WTO dispute settlement case (DS 31/1, from 1997).

⁴¹ "Turkey - taxation of foreign film revenues" (DS-43/3, in 1997) and "Canada - Measures Affecting Film Distribution Services" (DS 117/1, in 1998).

⁴² Amongst other rules, the following guiding principle of the Convention is clear: "Article 1 – Objectives...(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;..." (Unesco, 2005).

regional level, protective measures for national content were introduced in the EU in 1989, by the TWF and were maintained by the succeeding AVMS (Audiovisual Media Services) Directive. During these processes, as academic work has shown, there have been disputes between liberals and protectors of national cultures in both international forums, the WTO and Unesco. At the European level the 'dispute' may be identified between the European Commission 'versus' the European Parliament, the Council of Europe and the Member States.

This section is important as it illustrates to the reader the dissent between protectionists and liberals with regards to the international trade of cultural goods. Those negotiations lead to a transnational level of agreement which, eventually, granted legitimacy to national and regional (in the case of the EU) protective measures. Therefore, the introduction of national instruments for the promotion of national culture has to take into account those transnational agreements and the limitations they set to international trade. During the next section I will explain how media researchers have interpreted the consequences of global media pressures on the national level and how it affected the development of national broadcasting regulation and in particular the PSBs of our case studies.

3.5 Growing pressures on national broadcasters

As the GATT and WTO cases eventually legitimated protective policies at the transnational level, national governments were able to incorporate that protection into national legislation. However, in an increased commercial mediaspace, and with the constant pressure from competition with other services, national broadcasters, and especially PSBs, had to sustain and reposition themselves.

As seen in Chapter 1, many scholars highlighted the fact that one of the consequences of the technological developments of broadcasting was the appearance of numerous television channels in a very short space of time, competing for space with well established PSBs. As an understandable consequence of that competition, in 1996 commercial broadcasters from five different Member States of the EU filed cases against PSB dual funding systems that occurred in some countries (license fee and advertisements) and against the launch of new digital channels

(D'Haenens & Saeys, 2001: 111). These complaints resulted in the 1997 Amsterdam Protocol on PSB. As Humphreys (2009a) remarked “[d]isappointingly for the private media complainants”, the treaty recognised the importance of the public services and granted special protection for PSBs. As the author explains, the Protocol guaranteed that as long as the new activities are clearly defined in public broadcasters’ remits and are publicly accountable and controlled, they are permitted. State funding for PSB was also confirmed by the Protocol. As D'Haenens and Saeys (2001: 113) and Steemers (1999) moreover pointed out, the usage of digital technologies by PSB for enlarging audience figures and providing wide, plural and diverse programming was also considered legitimate by the Member States. Even so some scholars, like Donders and Pauwels (2008), see the European executive, the EC, as a watchdog of commercial media supervising the Member States and disallowing the expansion of PSBs when not explicitly authorised by broadcasters’ remit.

Following the treaty’s endorsement, in the new millennium, with the adoption of new regulation and the launch of DTV, PSBs expanded their services and launched new channels increasing their portfolio (D'Haenens & Bardoel, 2007: 89; Debrett, 2009; Hujanen, 2005: 69-71). Logically, that expansion conflicted with the interests of commercial media. While PSBs were delivering a public service in an enhanced (digital) mediaspace, commercial media was looking for more revenues.

As commercial media became more active in broadcasting, an increase in the regulatory control of public services associated with “cutting new public sector initiatives” has been noted (Brevini, 2009). The Public Value Test suggested by the EC and implemented in the UK and Germany for assessing whether or not a new service should be implemented by the BBC, ARD and ZDF (the two German PSBs), and hence financed by TV license payers, may be regarded as one of the results of those pressures (Debrett, 2009; Donders & Pauwels, 2008). An example of the outcome of this requirement is the application, by the BBC Trust, of the test to evaluate broadcasters’ on-line activities. As a result, the governing body denied permission to expand video news online. It regarded those activities as exceeding broadcasters’ remit and as having a negative impact on the market (Brevini, 2010).

The TV license has also been under increased criticism as a result of digital convergence. During the 2006 European Media Forum the license was the object of debates. While scholar David Levy defended it by stating that the contribution was a “direct public hypothecation link” for sustaining a public service, academic Mark Armstrong suggested that “people will increasingly choose what they want to watch at a time that is convenient to them” (cited in Boyfield, 2006: 37-8). Armstrong suggested that the BBC should move to a subscription-based model where payers will not have to pay for content never actually seen. One of the conclusions of that event suggested that the BBC could diminish its scope by offering only BBC 1 and BBC 2 on FTA and the other channels and services via subscription (ibid: 43).

Whereas in the UK and France broadcasting services are also framed by the EU legislation, in Brazil, there is no transnational body dictating internal regulations. As a result, the considerable political power of national commercial broadcasters allowed them to maintain a comfortable situation with a legislative framework that dates back to the 1960s (Bolano & Brittos, 2007: 44-5). It has to be noted that the *laissez-faire* attitude of Brazilian policymakers, where they had chosen not to intervene in FTA broadcasting, can also be regarded as a form of regulation. As Singh and Raja (2009: 28) correctly remind us, not to intervene is also a political decision. Sinclair (2010: 511) is more emphatic and claims that the almost unregulated environment led to a “‘savage’ or primitive capitalism” where broadcasters developed a symbiotic relationship with the government which allowed, mainly Rede Globo, to construct verticalised and dominant companies.

From these discussions, it can be inferred that, depending on the policies implemented commercial forces can have different effects on PSBs. While in Brazil commercial media reigns and there is no transnational regulation dictating any internal legislative changes for the main broadcasters, the European countries suffered a bigger regulatory change as a consequence of market forces and of the European Commission action. However, as shown in this section academic research has remarked that PSBs were still able to maintain a significant role in broadcasting services even in this new liberalised and digital convergence era. This section has also pointed out, as identified by scholars and in direct relation to this thesis, that even in times of increased competition, protective measures were introduced in order to restrict possible negative effects on national broadcasters

and on the production of national content. The next section will focus on researchers' perceptions of, arguably, one of the most relevant policies for the promotion of national content, the national and specific content quotas.

3.6 Content quotas in television

One of the regulatory tools used for sustaining the production and distribution of national content are the content quotas. By dictating the amounts and kinds of particular content that have to be scheduled, channels' identities (and national broadcasting landscape) are deeply affected by regulation (Messerlin, Siwek, & Cocq, 2004: 4; Ostergaard, 1998: 96-7). In this regard governments have different approaches to content rules and, overall, their actions reflect each country's historical approach to regulation and the steering power of their institutions.

France is a country which is regarded as having spent considerable effort protecting its national culture and film industry (Gillespie, Jeannet, & Hennessey, 2010: 78; Steele, 2006: 122). They have the highest national content quotas in broadcasting services. This approach is regarded by some as protectionist (Machill, 2008: 218), elitist (Harris, 2004: 71) and unnecessary (Chalaby, 2006). In the British case (apart from the European quota due to the TWF/AVMS Directive) there are no national content quotas in legislation. Instead, the focus is on independent content. The British independent quota is considered to be successful and responsible for creating a thriving industry in the country with, also, high exports (Chalaby, 2010; Ellis, 2000: 154). Another regulatory move that was considered beneficial for boosting independent production was the disaggregation of rights, which allows independent producers to keep hold of the secondary rights to a programme (Haynes, 2005: 89-90).⁴³ Interestingly, Chalaby (2010) claims that, alongside other characteristics of French media, such as direct intervention from central government and lack of dialogue with the industry sector, it was precisely the disaggregation of rights which enabled the international success of British independent producers. I will discuss these rules in more detail in Chapter 7.

⁴³ Secondary rights are the other rights not sold to the primary purchaser. For instance, if a FTA broadcaster purchases the content for their channel a secondary right could be a paytv channel.

On the other side of the Atlantic, the Brazilian nation is regarded, arguably, as “the only country in the world where the government has never considered mediating the relationship between the two industries [(broadcasters and independent producers)]” (Diegues, 2003: 30). Whereas in the EU the obligations imposed at the Member State level resulted in the creation of well developed television and film production sectors, Brazil opted not to apply noticeable quota rules for broadcasters (Diegues, 2003: 30; Hoinéff, 2008; Mattelart & Mattelart, 1990: 25). As a result of that lack of enforcement it could be expected that Brazilian channels would be ‘flooded’ by imported content. However, this is not the case, as home-made telenovelas are often regarded as one of the causes of commercial broadcasters’ high viewing shares, especially Rede Globo’s (Blumenthal & Goodenough, 2006: 491; Sinclair, 1999: 71; 2009; Stroud, 2008: 80).

The Brazilian case may indicate that ‘push’ policies for including national content are not necessary for attracting the attention of viewers for content produced locally. As mentioned in Chapter 1, it seems that it is not only the nationality of the content which matters to the audiences, it is a more complicated set of values (La Pastina & Straubhaar, 2005). As Straubhaar (1991) expressed early on, it is related to the cultural relevance or proximity of the programme. In a similar vein, Barthel-Bouchier (2011) concluded that international audiences were only attracted to French films if they fitted the expectations of what a French film should look like. Broadcasters and governments try to address the cultural relevance of the content in their policies and guidelines (Collins, 2004: 39-40; Roscoe, 2004; Steemers, 2010). However, to properly establish a set of values which represent the essence of the nationality could be a matter for huge debate. Consider for instance the following summary of British values compiled by the UKFC (2009: 22):

tolerance, fair play, decency, honesty, reticence (e.g. about contentious issues such as politics, religion, sexuality) to which might be added understated patriotism, and gallantry or self-sacrifice (in war and in extremis).

Certainly, for some, that list may not accurately describe ‘Britishness’ (or ‘Scotishness’, etc) and surely there is content made elsewhere in the world that shares some of those attributes.

Therefore, as Chapter 6 will discuss in more detail, regulators regard the cultural relevance of national content as being mainly related to industrial aspects, such as how those programmes are produced and which resources are employed.

National content policies receive criticism not only from those advocates of free trade and consumer choice, there are other arguments against broadcasting quotas. De Cock Buning (cited in Schneider & Bossche, 2008: 249) claims that quotas have limited value in broadcasting (probably less for VOD) and that, instead, financial subsidies should be used. Verhulst and Price (2009: 144) and others also believe that the 'plentiness' of digitalisation diminishes the effectiveness and necessity of content regulations as the abundance of channels diminishes the influence of individual content. Agreeing with that line of argument, Iosifidis et al. (2005: 13) and others note that digital channels are contributing towards the fragmentation of audiences while within a strategy of targeting different group of viewers. Quotas on traditional channels may, therefore, be skipped.

This section focused on, arguably, one of the most debated policies for the promotion of national audiovisual industries: the quotas for national content in broadcasting services. Scholars regarded quotas as maybe successful but they have to go along with financing schemes. Others regard these measures as inefficient. It was shown that EU countries use the instrument and still find it necessary and adequate in times of digital convergence, despite some degree of criticism. As one of the objectives of this thesis is to evaluate the best methods available for the promotion of national content, because of its relevance, as shown by the academic works here discussed, content quotas have the potential to have a significant role in this design. Therefore, those requirements will be carefully analysed in Chapter 7 during the second part of this thesis.

As films are an important component of broadcasting schedules and important contributors towards national culture and identities, the next section will present the academic debate on the regulations for the development of the film industries.

3.7 Film policies

As the film industry has the potential to generate considerable economic revenues for the country that produces it - by generating considerable amounts of tax revenues from internal distribution, exports and high quality jobs, promoting tourism and other acclaimed benefits - governments are

increasingly treating the developing of national content as an industrial strategy (Harvey, 2006; Oxford Economics, 2007: 1-7; Throsby, 2010: 14-28). This section will discuss in broader terms the cultural policies with relation to film production and the increasingly intertwined relationship between film and television industries.

According to Grant (House of Lords, 2010), several countries, including Canada and Australia, pursue the development and establishment of creative clusters as part of their industrial policy for the production industry. In fact, the availability of many skilled workers such as writers and composers is also useful for supporting other cultural industries, not only films. In the UK, as Dickinson and Harvey (2005) describe, the UK film policy had mostly an “industrialist” approach and currently it foment both cultural and economic goals. Although the authors criticise the fact that governmental agencies, who should balance those mixed objectives, are run predominantly by business leaders. In line with that view, De Smaele (2007: 119) remarks that the UK leans more towards an economic approach to cultural policy and, conversely, the author believes that France is more culturally oriented.

Throughout their book *Blockbusters and trade wars* Grant and Wood (2005) describe the Canadian “cultural tool kit” as a successful recipe for promoting national industries. According to the authors, the ‘push-pull’ measures should include: the correct assessment of the nationality of the work; the usage of PSB for promoting national identity; content quotas; establishing minimum spending rules; supporting national ownership; promoting competition policy and; granting subsidies. During Chapter 7 I will analyse most of those tools in detail. For now I will concentrate on screens quotas (for cinemas), as discussed by other scholars.

According to Baker (2002: 232-3), by creating a demand, a ‘push’ factor for national films, screen quotas contribute to the production of more indigenous films. Nevertheless, Lee (2009), while analysing the Korean screen quota system, found that the policy was more effective if associated with broadcasting quotas, because of the interdependency existing between the film and television industry. Returning to the countries which are the focus of this study, while Britain does not adopt a screen quota for national films, Brazil and France (although without enforcing) do (Collins, 1986:

298; Johnson, 1987: 184-5; Ulf-Møller, 2001: 144). Hill (1996: 99-101) remarked that quotas and the cinema agency were scrapped by the Thatcher administration while inserted in a discourse of “do away the paraphernalia of Government intervention” but also recognised that, ultimately, screen quotas were not stimulating the production of films. The Brazilian governmental approach also had similarities with Britain. Although not scrapping the screen quotas, president Collor also abolished the film agency and in the early 1990s the country’s production dropped dramatically (Moises, 2003: 6-7).

The screen quota in France is also an object of criticism. Jackel (1996: 88) inserts the French quota requirement within an overall policy for the protection of national culture. The author also acknowledges, although in another work (1999: 181), that more important for the French cinema is the comprehensive financing scheme set up by the French government since the 1950s.

The French integrated framework for both film and television may be a response to the fact that, as highlighted in Chapter 2 when presenting the different exhibition windows of audiovisual content, films are important ingredients of television schedules. Therefore, the development of the national film industry is also dependant on national broadcasting. As Mazdon (1999: 74) claims:

One thing which is certain is that the relationship between cinema and television, in France, Britain and indeed the United States is now undeniable. Indeed, it is fair to say that in Britain and France cinematic production could no longer survive without the support of television companies.

That assertion might also be applicable to other countries. Mazdon (ibid: 80) concludes that “[c]inema is now dependent upon the television companies for financial support but equally television turns to the cinema for a significant proportion of its programming.” In a similar line of argument, Ostrowska (2007: 38) also remarks that cinema is increasingly depending on television for funds and thus the cinematic production is more oriented towards the television needs.

Although an in-depth analysis of the financing schemes is included in Chapter 7, at this point it is important to note the following points. The more comprehensive financing scheme in France is regarded by some, like Guerrieri, Iapadre and Koopmann (2005: 35) and Leveratto (2007: 187), as being too focused on protecting the language and captured by film-makers and big cinema

distributors. On the contrary, the British policy is considered too centred on commercial issues (Newsinger, 2009) and too concerned with bringing in foreign investment (Harvey, 2006). Finally, the Brazilian approach could not refrain the economic power of Organizacoes Globo to extend their dominant position to the film activity as well, as remarked by Santos (2009).

In times of digital convergence and global ownership, and with content being made with a view to comply with quotas but also to the international market to amortize production investments, the introduction of cultural policies for fostering indigenous productions has to take into consideration the interdependency of both services and global markets. In fact, as will be seen in Chapter 7, cultural policies are integrating film and audiovisual developing strategies into single frameworks.

This section on film policies ends the discussions on the regulatory developments of recent times concerning audiovisual services and the chapter now arrives at its conclusions.

3.8 Conclusions

During this chapter I have explored the academic perceptions and the industrial and political discourses regarding the recent developments of broadcasting and telecommunication regulation. Additionally, this chapter has summarised the debates around the cultural policies of television and film industries. There is a consensus that the first tendency of liberalising broadcasting and privatising telecommunication of the 1980s and 1990s, changed to a continuous promotion of competition, in and between services, which led to a process of digital convergence. The new scenario impacted the regulatory aims and concerns and resulted in the usage of different regulatory tools. The objectives shifted from liberalising and de-regulating commercial communication services to regulating for competition, opening technological bottlenecks, mitigating gatekeepers and also re-regulating PSBs in continuously increasing commercial mediaspaces.

While during the first period (1980-2000) regulation was focused on *ex ante* rules inducing a new communication scenario, during the second period (2000-onwards) regulators are increasingly acting *ex post*, monitoring the market and only proposing remedies when, in their views, the

market's normal development could jeopardise consumer choice. As remarked by researchers, policymakers acknowledged that the consolidation of the market that followed liberalisation and digital convergence brought problems of pluralism of the media, particularly in broadcasting, which could in turn diminish competition. Moreover, as digital convergence blurs services and companies' interests, communication authorities' main regulatory action is to assess and propose measures assuring the continuity of competition. The convergence era is also the era of competition regulation.

The discussion has also shown that whilst from the telecommunication side there are no actual forces hampering the progress of digital convergence, from the broadcasting side there is still strong opposition to 'borderless' services. Member States and national broadcasters, especially PSBs, still 'waive the flag' for the separation of the services. Broadcasting and cultural products are still seen as important deliverers of national culture and contributors to identities. Regulation, although with varying intensities between countries, imposes rules for the protection and development of national content. Not only 'push-pull' policies, such as broadcasting quotas and financing schemes, are implemented. In addition, more comprehensive regulatory toolkits, which are useful for boosting television and film production, are set in place by national governments to achieve both cultural and industrial goals.

As seen from other scholars' works presented in this chapter, those are controversial policies for the promotion of national industries and for assuring distribution means for local content. The extent and the impact of those regulations on national industries will be the subject of my research during Part Two of this thesis.

The first three chapters of Part One have served as a literature review and as a contextualisation of the cultural, technological, economics and regulatory aspects of audiovisual content. Chapter 3 in particular was important to show to the reader that, as regarded by academics, policies aimed at fostering national content have implications in various fields and activities. In the second part of this thesis, I will perform a dual analysis of the legislation and of the communication markets of the selected countries. This double assessment will enable me to identify the key elements present in

regulation that boost the production of national content. First though, the next and final chapter of Part One is devoted to explaining the methodological and theoretical framework that I have applied for the comparative media research of the case studies. The chapter will detail the media policy analysis that will be undertaken, the regulatory acts and databases that will be used, and the theoretical concepts and ideas that will guide this research concerned with the promotion of national content in the digital era.

CHAPTER IV

THE RESEARCH STRATEGY

"I know that I know nothing"
Attributed to Socrates

"I know nothing"
Manuel (Andrew Sachs)
from the BBC sitcom Faulty Towers

4.1 Introduction

As a reminder of the objectives of this thesis, this comparative media research is concerned with the understanding of how the policies enacted in the recent era of digital convergence and of global media affect the production of national content. Thus far, in order to contextualise this research focus, I have used this first part of the thesis for guiding the reader through the various aspects involved. As discussed in Chapters 1 and 2, the production of audiovisual content encompasses sociological, cultural, technological and economic aspects that are highly intertwined. As a result of those interactions and of the political struggles between the different agents that comprise the audiovisual industry chain, a certain level of agreement is transubstantiated in each country's legislation and overall regulation. In Chapter 3 I have shown how after liberalisation national laws and transnational agreements were drawn up in order to accommodate traditional broadcasters and telecommunication companies in the new digital media world. After this contextualisation, the current chapter details the research framework used throughout this research in order to identify how the production of national content is affected in the current scenario and how regulation is used and can be used for its promotion.

The methodology used to perform and guide the research involves a mix of qualitative and quantitative analysis. As mentioned in the introduction to this thesis, the study will be divided into three steps, where both the legislation and the market will be scrutinised. The first step analyses the socio-cultural aims of broadcasting as enacted in legislation. The second step focuses on the regulatory tools of the communication legislation, including quotas and funding, the so-called ‘push-pull’ regulations. The third and last step of this research evaluates the results or the possible consequences of that legal framework by performing a market analysis of the audiovisual activities of the selected countries.

This chapter is divided in two main sections. Section 4.2 describes those three steps in detail, clarifies the definitions and concepts, and indicates the data sources used throughout this research. In section 4.3 I raise awareness about the limitations of the proposed research method and the applicability of possible extrapolations to other countries.

4.2 Methodological approach

In order to correctly understand the developing path that led to the current times of digital convergence, it is necessary to trace the changes in legislation back to the start of the liberalisation process, when more channels and delivery systems started to open to the public. Therefore, as I will describe later on in more detail, I will analyse the legislation from the 1980s to 2011.

Before detailing the three-step analysis that will be followed in this research, I would like to clarify how I define three important concepts that will be used throughout this thesis:

- **PSB** – The public service broadcaster, (in some cases) owned by the government or by the public with a level of independence from the national government. In this synthetic conception, the PSBs of our case studies are: the BBC (UK), France Televisions (France) and the EBC (Empresa Brasileira de Comunicacao and producer of the channel TV Brasil).

- Traditional (or main terrestrial) broadcasters – The original broadcasters available in the analogue mode and which are freely received through the air (free-to-air services - FTA) and included in paytv platforms as must-carry obligations.⁴⁴
- Broadcasting services – Different modalities (or platforms) of distribution of broadcasting channels, which include: FTA (analogue and digital); paytv (mainly cable and satellite) and; non-linear services (such as VOD and IPTV).

4.2.1 Step 1 – Analysis of the socio-cultural objectives of broadcasting services as expressed in legislation

As discussed in the previous chapters, the regulation of the production and distribution of audiovisual content is directed by broader socio-cultural objectives. My research is based on the assumption that regulatory tools present in legislation are supporting the achievement of higher socio-cultural goals for the different broadcasting services. The first step of the research, objective of Chapter 6, will analyse how those objectives are addressed by broadcasting legislation. The first step of analysis, together with the second step that I will describe later on, should indicate which approach, whether cultural or industrialist, is favoured by the legislation of each country. Figure 3 below indicates the model of analysis proposed for the first two steps of this research.

⁴⁴ In the UK: BBC 1, BBC 2, ITV 1, Channel 4 and Channel 5. In France: TF1, France 2, France 3, M6 and Canal Plus (albeit the latter is a subscription-over-the-air channel, because it is part-time open to the public and is an important component to the French scenario it is included in the hall of traditional broadcasters). In Brazil: SBT, Record, Globo, Band, TV Brasil (although there are other networks available in several localities such as Rede TV). Please see Chapter 3 for explanation on must-carry rules.

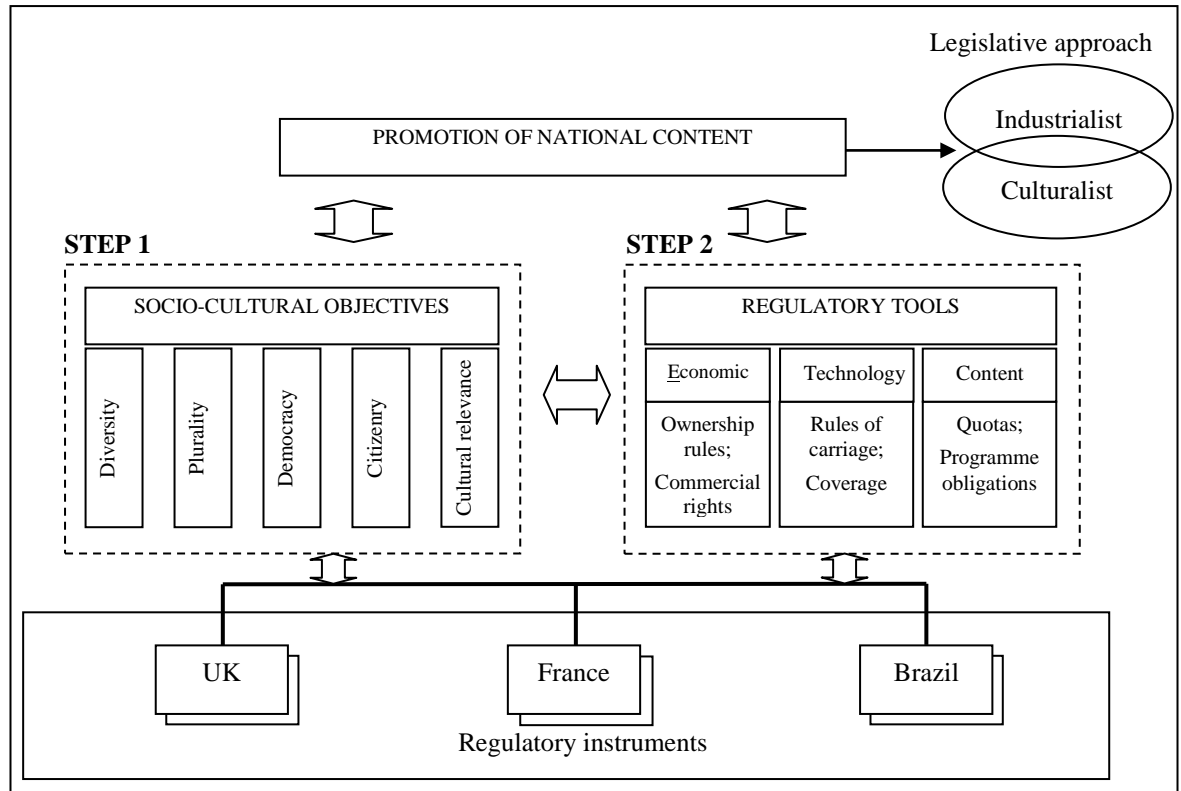


Figure 3- First and second steps: evaluation of objectives and tools in regulation

As represented in Figure 3, the first step will evaluate the selected legislation against specific concepts that, arguably, define the socio-cultural aims of broadcasting as envisaged by policymakers. Those concepts and their definitions (extracted from the discussions of the previous chapters) are summarised in Table 1.

Table 1 – Step 1 – socio-cultural objectives found in legislation

Objectives	Definition
Diversity	Provision of a broad range of information, views, and of content (diverse programming) adding richness and variety to cultural and social life (McQuail & Siune, 1998: 42-3).
Plurality	Different sources of information (different ownership) and the existence of autonomous and independent media (McQuail & Siune, 1998: 42-3); concept related to 'ownership pluralism' (Kuhn 1995: 50) or 'external pluralism of ownership' for the balance of opinions (Levy 1999: 28).
Democracy	Usage of the media as part of the public sphere and as a democratic tool for participation and for public debate; integrated with the political system and without censorship (Price, 1995: 23).
Citizenry	Usage of the media for the promotion of ideas of belonging, identity and participation (Morley & Robins, 1995: 74; Price, 1995: 17) and of PSB for the Reithian ethos "to educate, entertain and inform" (cited in Wise & Steemers, 2000: 90).
Cultural relevance	Usage of mass media for the support of national values and authors (Oren & Petro, 2004: 99). The support of the public interest by disseminating cultural goods, sharing a cultural heritage and "securing channels for reaching people with artistic cultural experience" (McQuail, 1992: 284).

This step will not attempt to quantify broad and polysemic concepts such as democracy, citizenry and cultural relevance but, instead, evaluate how broadcasting services are related to those aspects, as addressed by legislation, and how those objectives have changed through time. Within the concepts presented in Table 1, I would like to draw the attention to diversity and pluralism. Those two ideas had shown some discrepancies in their definitions according to different authors and, also, regulations (see Annex 3 for detailed examples of those differences). During this research I will relate diversity to 'a whole range of opinions and of types of programmes' (internal pluralism) and plurality to 'plurality of ownership' (external pluralism).

A second qualifying remark I wish to make about this proposed approach is that most of the socio-cultural concepts analysed here are in fact inter-related. Although I drew boundary lines as clearly as possible in order to isolate the different objectives, some regulations may be classified by other researchers as supporting different concepts and hence the objectives fostered could be interpreted differently.

As to the pieces of legislation studied, I will include in my socio-cultural analysis regulations from two originally different spheres: FTA broadcasting and telecommunication providers (distributors of cable, satellite and on-demand platforms). A summary of the pieces of legislation that will be used in this research is given in Table 2 below.

Table 2 – Main regulatory instruments analysed

UK	France	Brazil
Broadcasting Act 1981, 1990 & 1996	Broadcasting Act 1982	Broadcasting Code 4117/62 and Decree-Act 236/67
BBC Charter and Agreement 1981, 1996 & 2006	Freedom of Communications Act 1986 (and amendments 1994 to 2007)	Federal Constitution 1988
Communications Act 2003		Cable Act 8977/95
		PSB Act 11652/08
		Paytv Act 12485/2011

As the reader can see from Table 2, I included in this analysis the broadcasting acts that started the liberalisation of broadcasting in the 1980s in the European countries. I decided to start my analysis in that decade because the current media landscape and the majority of the existing traditional channels in Europe were deeply influenced by the reforms initiated in that period. For the Brazilian side, in order to maintain a cohesive analysis between the three countries, the starting point will have to date back to the Broadcasting Code 1962, as it was the broadcasting act in vogue in the 1980s (and still is).

In this step I will analyse the acts that introduced in Britain and in France the new broadcasters Channel 4 and Canal Plus, in 1981 and 1982 respectively. In the British case, the analysis includes the reforms of 1990, 1996 and 2003 and concludes with the BBC Charter and Agreement of 2006. It is important to note that in the British case, the Broadcasting Acts 1990, 1996 and the Communication Act 2003 are still valid and, therefore, need to be interpreted jointly.⁴⁵ In France the broadcasting analysis will be continued with the ongoing Freedom of Communications Act (FoCA)

⁴⁵ See Annex 3 for more information on the legislative amendment process.

1986, including its amendments. In order to understand how the broadcasting sector is organised in Brazil, it is necessary to include the Federal Constitution 1988 as it is the instrument that sets out the overall aims of broadcasting services in that country. The other pieces of legislation for the Brazilian broadcasting analysis are the PSB Act 2007 and the Paytv Act 2011.

From the telecommunication side of regulation, the second sphere aforesaid, the legislation will be analysed only topically, focusing exclusively on the access rules and universal obligations. Those obligations were initially set in the cable and satellite legislations of the 1980s and later incorporated in broader broadcasting acts, in the case of the European countries. In Brazilian regulation, those rules were foreseen in the Cable Act 1995 and later transferred to the newest Paytv Act 2011. The universal obligations that were introduced in later reforms in Europe were incorporated on the British Communication Act 2003 and on the FoCA 1986 for the French case.

In order to assess whether more attention is given to the socio-cultural objectives of broadcasting or, alternatively, if regulation is solely employed to discipline the industrial and commercial aspects related to the production and distribution of domestic content, this step is complemented by the second step.

4.2.2 Step 2 – Analysis of the Regulatory tools for the promotion of national content

The second step of this research, objective of Chapter 7, is the analysis of the regulatory tools supporting the production and distribution of national content, both for television programmes and films. This step focuses on the tools relating to the economic, technological and content aspects which are detailed in Table 3.

Table 3 – Step 2 – regulatory tools analysed

Fields	Tool	Explanation
Economic	Ownership rules	Clauses in regulation relating to the ownership of broadcasting channels and limits to cross-media ownership.
	Nationality of the content	Systematic adopted by regulators for establishing the nationality of the produced content (film and television).
	Funding	Schemes foreseen in regulation for financing national productions (tax reliefs, levies, funds and public subsidies)
	Commercial rights	Rules regarding the commercialisation of broadcasting rights, exclusivity deals and listed events.
Technological	Rules of access	Existence of offering rules (must-carry, must-offer and may-carry) and coverage obligations for FTA broadcasting channels.
Content	Cinema quotas	Screen quotas and film diversity in cinema screens.
	Broadcasting and non-linear quotas	National content quotas and quotas for specific types of programmes (such as educational or news).

The tools related to the economics of the media, listed in Table 3, regulate the relationships between the different activities involved with the production and distribution of audiovisual content and with questions of nationality. The technological tools are mainly related to the rules of access to the main terrestrials. This is a matter of increased importance with the roll-out of DTV. The third category, tools related to content and normally expressed as quantifiable quotas in terms of percentages and hours of specific types of content, indicate which types of content are being fostered and attract more the attention of policymakers and regulators. The quota analysis will trace the historical development of the various content quotas foreseen by regulation. The size of those obligations for broadcasting services, cinema screens, independent productions and the different kind of content enforced by regulation will be identified and quantified. That evaluation will enable a direct comparison between the three case study countries and analyse how the socio-cultural objectives identified in broadcasting regulations are promoted throughout the period analysed.

Quota obligations are foreseen in the broadcasting acts listed in Table 2 and these regulations comply with the TWF/AMVS Directive which will also be object of study. The requirements are further detailed in broadcasters' licences for the case of the European countries. As mentioned in Chapter 3, in the case of Britain there is only a European content rule imposed by the TWF/AMVS Directive. France has that same regional quota complemented by their FoCA 1986 which establishes additional national content obligations. Brazil does not have a national content quota for commercial FTA broadcasters.

Independent productions quotas are set by the same European Directive and by the broadcasting acts already mentioned in Table 2 for the European countries. Brazilian obligations are set both in the PSB Act 2008, and therefore only valid for the PSB, and in the Paytv Act 2011, in this case valid only for paytv channels.

Specific content obligations are set in each broadcaster's license in the case of the European countries. As it would be impractical to analyse the licenses of all existing broadcasters, this research will concentrate only on the main terrestrial broadcasters. Specific content obligations impose on broadcasters the funding and scheduling of specific types of programmes, for instance: films; news; children and educational. Those obligations (set in terms of percentages and of hours) are detailed on broadcasters' licenses and, in the case of PSBs, agreements.

The cinema (screen quotas) activity will be included in this analysis because of the close relationship and dependence (in terms of financing and of distribution opportunities) between film and television production. For cinema production the main existing obligations to be scrutinised are the screen quota and the diversity agreements with cinema operators. As the UK abolished screen quotas in 1985 (J. Hill, 1996: 101), I will analyse the Brazilian and French decrees that establish screen quotas. With regards to diversity of films in cinemas, these are agreements only present in the French case.

A significant part of the regulatory instruments that will be analysed in Step 2 is that used in Step 1 and listed in Table 2. However, for the analysis of how the nationality of the content is assessed

and the funding mechanisms in place, the Acts contained in Table 4 have to be added to the investigation.

Table 4 – Additional regulatory instruments relating to the definition of national content and its financing

UK	France	Brazil
Films Act 1985	Films and Audiovisual Diffusion Decree 90-66 (and amendments 1992, 2001 & 2004)	Cultural Patronage Act (Rouanet Act) 8313/91
Financing Act 2006	Production Financing Decrees 95-110, 99-130, 2001-609, 1332, 1333 & 2002-140	Audiovisual Acts 8401/92, 8685/93
		Ancine Provisional Measure (PM) 2228-1/2001

In the British case both aspects of nationality and funding mechanisms are present in the Films Act 1985 (and 1999, 2005 and 2006 amendments).⁴⁶ For the French case the financing is foreseen by the FoCA 1986 and implemented by the Decree 95-110 which is regularly updated.⁴⁷ The legal instruments that set the grounds for classifying the content as French are set by the Decree 90-66 and the CSA Norm from the 21/May/1992. Brazil defines the nationality of the content by the Ancine Provisional Measure 2228-1/2001. The tax relief regimes and other incentives are established by the Audiovisual Incentives Acts 8313/91 and 8685/93, both of which have been amended several times.

Whilst the first step indicates how governments are shifting the different socio-cultural aims of broadcasting services, this second step is aimed at clarifying how the socio-cultural concepts are being promoted by policymakers and regulators to sustain national audiovisual industries in recent times. Therefore, the combination of these two initial steps will indicate whether policymakers and

⁴⁶ The actual procedures are detailed on the Film Production Company Manual from the Her Majesty's Revenue and Customs which will not be analysed because tax technicalities are beyond the scope of this thesis. The 2005 and 2006 amendments were introduced by the Finance Act 2006.

⁴⁷ The act created the SOFICA (Societes pour le Financement de l'Industrie) and the COSIP (Compte de soutien à l'Industrie des Programmes Audiovisuels), which are important funding mechanisms that will be described in detail in Chapter 7.

regulators are actually connecting the socio-cultural objectives of communication services with the designed regulatory tools. This analysis will indicate whether regulation is pursuing ‘cultural’ or ‘industrial’ approaches while promoting the development of national content and national audiovisual industries.

4.2.3 Step 3 – Analysis of market data

The third and last step of this research and the objective of Chapter 8 is the market evaluation. The main parameters concerning audiovisual media services will be evaluated using reports from the broadcasting sector, regulators and other third party databases which will be specified later on during this section. In this (recent) historical assessment the figures that will be quantified are listed in Table 5 below.

Table 5 – Third step: the market analysis

Production market	Broadcasters	Distribution market	Viewers
Number of companies	Total investment in content	Number/share of subscribers per technology/company	Viewing shares of main and digital channels
Total production in hours	Hours produced and commissioned	Ownership	Origin of the most viewed content
Types of programmes and films produced	Programme schedules	Combined revenues	Origin of most viewed film in cinemas
Combined revenues	Origin of films/formats		
Public investment	Revenues/Funding		
Exports/ Imports			

As can be seen in Table 5, the market analysis will be divided into the same activities as those presented in Chapter 2, while describing the industry chain segments: producers, broadcasters, distributors, and viewers. The variables analysed for the production activity will indicate the fulfilment of socio-cultural objectives and assess the economic development of that particular sector. Within the socio-cultural aspects, the degree of diversity will be indicated by analysing the combination of the number of companies in activity with the total production in hours. The cultural output, and therefore an indication of the cultural relevance, will be measured by analysing the kind of content produced and viewed in the country. The impact on the national economy will be

considered by assessing the public investment (in terms of grants, direct funding and tax reliefs) in conjunction with the exports results.

For the broadcasting activity the cultural relevance will be assessed by combining the analysis of the kind of content being broadcast and its nationality. As formats are currently a considerable part of the broadcast content, the nationality of the actual origin of the format will also be scrutinised. The contribution of broadcasters to the overall audiovisual sector will be quantified by analysing the investment diverted to production, whether in-house or commissioned. Moreover, the financial strength of the activity will be evaluated by assessing its economic size (revenues or financing in the case of PSBs) and the result of international trade.

As an indication of the degree to which digital convergence is being achieved in each country, the distribution segment will be assessed succinctly by analysing the ownership of the major distribution platforms and its penetration. This analysis will indicate whether telecommunication companies may represent a relevant competitor to broadcasting services and if foreign companies are important deliverers of national culture in times of digital convergence.

Completing the market analysis, viewers' preferences will be evaluated. This assessment will be used as a parameter for measuring the effectiveness and the desirability of public policies concerned with the promotion of national content. The viewing shares may be regarded as a justification of the public effort in regulating and funding national content. In the extreme hypothetical case, it would be useless to produce and exhibit content not watched by anyone. Therefore, during the investigation of this segment of the 'market', the viewing shares of the main channels and the nationality of the most watched content will be analysed. Formats are also of particular interest for this research because imported cultural concepts may be used while still complying with national content quotas. By analysing the origin and genre of the most desired content it will be possible to conclude if quota policies are responsible for generating and maintaining certain socio-cultural aspects and the local industry. In addition, it allows us to see whether that industry and regulatory effort is valued by the citizenry. As mentioned before, because

of the close relationship between cinema and television industries, audiences' preferences on cinema screens will also be studied.

As to the data used for this third step, the parameters for the market analysis, listed in Table 5, will be sought in secondary sources. The main ones are presented in Table 6 below.

Table 6 – Industry data sources

Type	UK	France	Brazil
Regulatory agencies	Ofcom	CSA (broadcasting)	Ancine (film production)
	BFI/UK Film Council	CNC (film production)	Anatel (telecommunications)
Research Associations	Barb, EBU, Eurostat, Mediametric		Abta (paytv), Abert (broadcasting), Portal do Cinema and Filme B (films)
Broadcasters	Annual reports, Press releases		
Industry (other)	Reports (Pact, Grupo de Midia); Reports in relevant trade journals such as Screen Digest, Broadcast; Newspaper articles		
Academic	Academic journals and library databases (Ebsco, Sage, Jstor, Muse, eThos, Nexis etc)		

The regulatory agencies are vast sources of information for the production, broadcasting and telecommunication sector as well as covering topics regarding users' preferences and viewing habits. For the British case, Ofcom reports will be used for the information regarding broadcasting and telecommunication services and the BFI (British Film Institute) for the film production activity. As shown in Table 6, France will be analysed by using two agencies (the CSA - Conseil Supérieur de L'audiovisuel - and the CNC - Centre National du Cinema et de l'Image Animée). For the Brazilian case, Anatel will be used for telecommunications and Ancine (Agência Nacional do Cinema) for audiovisual production. The governmental information will be complemented with tier party reports. Documents produced by research associations, commercial industry bodies, and relevant government bodies (non-regulatory) will be used for the market analysis. The data will be completed with information provided in relevant trade and academic journals and newspaper articles.

At this point it is important to mention that although the regulatory analysis will commence with the instruments of the 1980s, because of the lack of consistent available information, the market analysis will be performed with data starting from a later period and will vary according to the activity and source used. For instance, the assessment of the quota obligations will start in 1987 (for the French case) and 1993 (UK), data regarding broadcasters' activities will start in 1993, independent production from 2003 and audience shares from 2000 onwards (for more detail on the sources used and constraints of this research please see Annex 3).⁴⁸

With the completion of this third step, I will identify the results of the policies analysed in the previous first and second steps. This third step will indicate the extent of the development of national audiovisual industries and indicate if national production and the socio-cultural values fostered by regulation attract the attention of the viewers. The market analysis will address three main questions. First, if the production and distribution of national content is maintained within desirable (and regulatory) levels allowing the maintenance of national culture and identity. Secondly, whether national content attracts considerable audience share. Thirdly, what kind of national content is more prominently watched. The analysis of those three questions will enable me to assess, critically and evidence-based, the effectiveness of the regulatory framework approach of regulation and whether it has a 'cultural' or 'industrialist' bias. That is the purpose of dividing the research into three steps.

After discussing the methods and the sources of information, the next section will elaborate on the limitations of the proposed research.

4.3 Limitations of the proposed methodology

Besides the lack of availability of data for all the period which is covered by the legislative analysis, as discussed in the previous section, the proposed methodology does have other drawbacks. The first one, and perhaps the most obvious, is that there are other parameters which are not analysed

⁴⁸ It is important to note, however, that this gap between the years of enactment of the legislation and the market data is also necessary in order to allow the changes in legislation to have a noticeable impact on the markets.

in this research but that also influence the performance of national industries. The overall economic strength of the country, currency exchange rate fluctuations, the success of a particular show and other numerous and unaccountable varied factors may substantially alter an industry's development and growth. For example, not only is the success of content unpredictable, as Grant and Wood (2005: 48-9) remind us, the 'nobody knows factor', but other unforeseen factors such as the scriptwriters strike in the USA in 2007-2008 may also play a role. In the latter case for instance, the event had a positive impact on British exports of formats, as suggested by Esser (2010). Nevertheless, the legislative framework analysis is still significant as the legislation sets the overall direction and level of development desired by national governments for their own audiovisual industries.

Davis (2008: 53-4) notes that the rationale behind this kind of research, which he categorises as being under the domain of media political economy, is that cultural output is shaped by a country's overall set of conditions, including legislation. The author notes that whilst some researchers explain the cultural production by focusing on the consequences of advertising or of media concentration, others link the development to politics, policy and regulation, as in the following quote (ibid: 54):

Laws governing such things as media ownership, cultural content, licensing and levels of taxation are all likely to have a bearing on cultural outputs. In these accounts cultural outputs are in part shaped as a consequence of political and economic conditions. The negotiations and decisions of individual politicians, regulators and business owners and advertisers filter through to influence the choices and methods of those who make, edit, produce and distribute cultural products.

As can be seen from the preceding quote, a political economy approach placing a particular emphasis on legislation is not regarded as inappropriate or overestimated, rather it is a valuable angle from which to understand and suggest alternatives for the development of national cultures. Nevertheless, I acknowledge the fact that the analysis performed here will be influenced by my personal professional background. Having been working as a policy specialist, I may have developed a tendency of overestimating the driving force of regulation. On the other hand, this professional experience was an important asset in digesting the arid legislative texts and intricate proceedings which is certainly a limiting factor in undertaking this kind of research.

On a final note, comparative media research is often acknowledged as being better executed by 'native scholars' (Verhulst & Price, 2009: 142), which is clearly not the case in this research when analysing Britain and France (albeit I have been based in the UK during this research). However, the methodology here proposed - by dissecting the regulation into socio-cultural objectives and regulatory tools and complementing this analysis with an evaluation of the different segments of the market - should tone down possible misconclusions.

4.4 Conclusions

The creation of a supportive environment for the development of the various activities related to audiovisual content is a goal constantly sought by national governments. Some countries may be more open to foreign companies and to imported cultural products, while others may have a tendency to absorb more eagerly those produced by local companies. Moreover, the ideas supported by legislation might favour the empowerment of local values and culture or simply reflect an industrialist desire of developing a particular economic activity. Therefore, the ideal policy could be regarded as the one that balances those two goals, cultural and industrialist, generating a virtuous cycle for the production, distribution, maintenance and flourishing of national cultures alongside a healthy development of national audiovisual industries.

The methodology proposed is expected to elucidate which kind of national content and socio-cultural concepts and, overall, of audiovisual sector each of the selected countries are implementing and fostering. The first step will indicate which socio-cultural goals are deemed as important by policymakers. The research of the second step will show how socio-cultural values are promoted by the regulatory tools concerned with the production and distribution of national content. Together, both steps will indicate if 'push-pull' policies are adequate for fostering and developing the production of national content and whether the setup valorises in a balanced way both 'cultural' and 'industrialist' sides needed for the audiovisual industry in times of digital convergence. The final step will provide evidence of the impact of the regulatory framework setup and the actual audiovisual development through time.

As discussed in the introduction to the thesis, there are several contributions to knowledge offered by this research. Based on the evidence gathered with the three step analysis proposed, the regulatory elements that positively and negatively affect the development of national audiovisual industries will be identified. In this media political economy analysis, the exploration of the current developments and the different regulatory perspectives implemented by the selected countries will contribute to generate an informative picture of the latest trends in those significant countries. In addition, as those countries are relevant for the international economy and for the overall policymaking process, the approaches and tools developed and used there may also be useful for a comparative media analysis with other countries. Alongside this panorama, the research will enable the identification of a relevant toolkit for the promotion of national content, useful for regulators and policymakers. With the combined method proposed here, the socio-cultural concepts enforced by specific quotas will be assessed against concrete parameters of market performance. As a consequence, the identification of the elements that positively contribute towards the production of national content will be based on evidence. Due to this systematic approach, I believe that this three step method could be applied to other countries with a certain degree of success, clarity and verifiability expected.

Part Two of this thesis will focus on the research conducted on the three case study countries. The first chapter, Chapter 5, will examine the recent changes in the communication landscapes of the UK, France and Brazil.

PART TWO

CASE STUDIES

COMPARATIVE ANALYSIS OF THE UK, FRANCE AND BRAZIL

CHAPTER V

RECENT CHANGES IN THE COMMUNICATION LANDSCAPES OF THE SELECTED COUNTRIES

" 'Forget everything that I wrote', I never said to anybody...It happened the other way round...There was an evolution, in some points, but the basic way of looking to the world remains the same"
former President and sociologist Fernando Henrique Cardoso commenting on his critics of why he embraced neoliberalism
(Cardoso, 1997)

5.1 Introduction

As the globalisation process is aided with the speed of electronic communication, there may be a general feeling that the world is constantly becoming more connected, inter-dependent and the media systems more similar. The first three contextualisation chapters have already shown the similarities and the closeness of the events, trends and forces that shaped the *mediaspaces* in recent years, notably liberalisation, digitalisation and the ongoing process of digital convergence. The purpose of this chapter, the first of the second part, is to elaborate on the recent history of the communication services in each of the three case studies comparing their broadcasting landscapes and how they were modelled by changes in legislation. This up to date panorama is one of the contributions to knowledge of this comparative media research.

The chapter starts with section 5.2 comparing the models and general setups of the broadcasting systems of the three case study countries. After this initial appraisal, sections 5.3 to 5.5 will illustrate how regulators in Britain, France and Brazil gradually licensed the spectrum to different

and, in some cases, complementary broadcasters and how their channels started to compete with paytv platforms. Before the conclusions, section 5.6 will summarise the major legislative developments and illustrate the current broadcasting landscapes of the case studies.

5.2 Brief contextualisation of the different media systems of the UK, France and Brazil

As one of the purposes of this thesis is to suggest a regulatory toolkit for the promotion of national content and as traditional broadcasters play a significant role producing and distributing national programmes, an initial comparison between the broadcasting systems is necessary. This contextualisation will indicate the applicability of the transposition of different regulatory solutions not only with regards to our case studies but, also, with other countries. As Browne (1989: 60) remarks:

An understanding of [the factors that influence broadcasting systems] should make it easier to observe how and why systems resemble each other and differ, and what each might profitably learn from another's perspective.

Broadcasting systems are different around the world and the causes of these variations may be traced back to their creation. In the case of the UK, in 1925 the (parliamentarian) Crawford Committee, appointed by the British Postmaster General, concluded in its report that “the United States system of free and uncontrolled transmission and reception was unsuited to Britain” and that broadcasting should be a monopoly of one entity (Commons, 2004: 56). During the proceedings it was suggested that broadcasting should be delivered by “a public corporation which should act as a trustee for the national interest” and not directly by the government (Banerjee & Seneviratne, 2006: 22). In accordance with the Committee's suggestions, the BBC (British Broadcasting Corporation) was then established for the provision of a public service at an arm's length from the public administration, minimising direct interference from the government or from private companies.

Conversely in France, broadcasting was subjected to strong political control until the end of state monopoly in 1982 with the election of Mitterrand, the first leftist president of the Fifth Republic (i.e. since the end of World War II) (Coleman & Rollet, 1997: 35; Kuhn, 1995: 165). At the other extreme

of governmental control, Brazilian television services were always characterised by weak state broadcasters (Conniff & McCann, 1991: 231; Lash & Lury, 2007: 160). In Brazil the consolidation of nationwide commercial broadcasting services was allowed and incentivised as long as television acted in the service of political objectives, dictated by the military regime of the 1960s (Becker & Gonzalez de Bustamante, 2009; Leal Filho, 1988: 31-3; Newcomb, 2004: 313; Porto, 2007; Thussu, 2007a: 95; Waisbord, 2000: 55).

Although with different timing and intensity, all three countries have reached a similar media development and independence from the government. However, there have been episodes where the media have still shown some fragility in their independence. The BBC was accused of being partial in several episodes, more recently in 1991 and 2003 (Harrison, 2006: 121; Montgomery, 2006).⁴⁹ In the French case, according to Kuhn (1995: 185-95), until the end of governmental monopoly, partiality was an inherent characteristic of French television. After experiencing around twenty years of relative independence from direct governmental action, in a recent legislative change, as will be seen later on during this chapter, Sarkozy re-introduced some degree of state interference as the head of the PSB is directly appointed by the presidency of the republic. In the Brazilian example, although led by commercial groups, perhaps the most notorious episode of media bias was the coverage by commercial broadcasters, particularly TV Globo, of the 1989 presidential debate between Lula and Collor. That event is considered to have overturned the results of that election, the first direct election since the 1960s, which resulted in the election of Collor, and is often referred to as the most partial and unfair coverage in Brazilian broadcasting history (Goulart, 2008; Straubhaar et al., 1993 cited in: La Pastina, 2004; Miguel & Simões, 2000).

There are elements other than political independence that should be observed in the different media systems in order to understand the different broadcasting setups. Several academics, most notably Siebert et al. (1963) and Hallin and Mancini (2004), have developed different models of classification (see Annex 4 for the application of those models to the case studies) and the

⁴⁹ In 1926 the BBC was accused of both supporting the government and the unions during the Great Strike. During World War II it did not broadcast allegedly “state propaganda” and during the 1991 war with Iraq it was accused by the government of being sympathetic towards Iraq (Harrison 2006: 121). More recently, in the episode known as the Gilligan case, in the build up to the 2003 war with Iraq, the corporation broadcast a governmental dossier containing allegedly known false information supporting the governmental view that an invasion was needed (Montgomery 2006).

proposal of new classifications is still ongoing (see for instance Curran & Park, 2000 and; Engesser & Franzetti, 2011). Even though for the aims of this thesis a comprehensive discussion of those models is not relevant, it is important to notice that, although those scholars propose different classifications based on diverse concepts and dimensions, media systems have common and overlapping components which can be identified in each country's system. In fact, the changes in the world's political scenario, with the fall of communism in the late 1980s and the global shift, with few exceptions, towards neoliberalism may be regarded as reducing the diversity of broadcasting models (McQuail & Siune, 1998: 1-2). Or, as Papathanassopoulos and Negrine (2011: 84) summarised, most countries are adopting a market-led American broadcasting philosophy.

In our particular case studies, all three media systems may be summarised as being free (as opposed to censored), having a coexistence of public and private broadcasters and with some extent of social responsibility. Therefore it is reasonable to generalise that those media systems are converging into the 'liberal model', under the classification of Hallin and Mancini or into the 'social responsibility models', according to Siebert's group proposal.⁵⁰

As those models are characterised by being predominantly and increasingly market oriented, but maintaining certain social responsibilities, a concept inherent to democracy, the comparison between the UK, France and Brazil will be useful and the conclusions applicable for other countries with similar models and political systems. After having contextualised the different broadcasting systems, the next sections, starting with the UK, will analyse in more detail each country and how the broadcasting services were implemented since the liberalisation of the 1980s.

5.3 UK – consistently increasing competition

One of the consequences of the technological evolution and of policy changes was the appearance of numerous television channels in a considerably short space of time. Although, the finite nature of the spectrum restricted that initial increase to cable and satellite.⁵¹ Perhaps due to the long tradition

⁵⁰ See Annex 4 for details on the classification of the media systems.

⁵¹ FTA broadcasting could only cope with up to 6 channels in the VHF band. The VHF channels were used by the former analogue channels (channels 2 to 13). For more technical details see Annex 2.

and prominence of the BBC, the UK opted for an even more restricted airwave occupation. Until 1982, viewers in Britain only had three channels: BBC1 and 2 and the commercial ITV.⁵² In 1981 policymakers decided to include another channel which would compete for advertisements. The Broadcasting Act 1981 was aimed to redress the balance of the broadcasting duopoly and Channel 4 was created (Coleman & Rollet, 1997: 24). The solution found by the British government was singular. As the existing channels were perceived as not serving minority tastes and audiences, Channel 4 was created as a public service and state-owned by the IBA (Independent Broadcasting Authority) (ibid). The channel's purpose was to "provide a national service for the social and cultural needs of so-called minority and specialist groups" (ibid).

It was in this mediaspace, with public broadcasting (the BBC), one commercial channel (ITV) and Channel 4, also public but with advertisements that cable and satellite emerged. As mentioned in Chapter 3, the 1980s were times of liberalisation in several activities of the economy and broadcasting was one of the sectors where competition was introduced. Under the rules of the Cable and Broadcasting Act 1984, by 1985, eight regional companies were offering cable nationwide with 20 channel packages and, in 1989, Sky satellite television services started with four channels (Crisell, 2002: 229-30; Robins & Jones, 1997: 175; Starks, 2007: 25).

The liberalised multichannel, but still analogue, broadcasting environment triggered concerns of possible negative effects of media concentration and of foreign ownership (Conboy, 2010: 62). The Peacock Report⁵³ of 1986, commissioned by the Thatcher government, criticised the BBC and ITV as inefficient and insulated from open competition. As a result, the main liberal and market oriented approach of the report was reflected in the subsequent Broadcasting Act (BA) 1990 (Conboy, 2010: 62; Coppens & Downey, 2001: 333; Hutchison, 1999: 131; McDonnell, 1991: 164). Two new rules introduced by the new act are directly related to this thesis. First, the act mandated a 25% share of independent programming in broadcasting services (down from the 40% suggested in the Peacock report) and, secondly, a series of cross-ownership rules preventing media concentration both in broadcasting and, horizontally, with other media (Debrett, 2010: 39). Amongst the various ownership rules, national newspaper owners with a market share exceeding 20% could not hold

⁵² ITV is a regional channel networked nationally for the broadcasting of certain programmes such as news.

⁵³ The report of a parliamentary committee.

licenses of ITV or Channel 5 (Barendt & Hitchens, 2000: 248; Parr, Finbow, & Hughes, 2005: 86). Another feature of the act that increased competition and that will be extremely relevant in the digital future, was the enabling of cable companies to offer telephony services (Crisell, 2002: 230). At this point it is important to mention that the fifth channel only started to broadcast seven years after its legal creation (and 15 years after the creation of Channel Four), which may indicate that the advertisement market was not big enough for sustaining another commercial channel at the time legislators created it. However, it was precisely during that hiatus between the 1980s and late 1990s that paytv multichannel systems consolidated and matured in that country. Namely Sky emerged as the satellite operator and NTL and Telewest consolidated as the major cable distributors (Starks, 2007: 47-8).⁵⁴

It was under the rule of the BA 1990 that the different services started to digitalise and converge. In a 'new multimedia environment' restrictive cross-ownership rules such as the existing ones were regarded by some (and by the operators) as negative for investment in new technologies. The argument for reducing restriction was the possibility of creating media conglomerates which could invest in digital technologies and compete in global markets (Doyle, 2002: 90-2; Wise & Steemers, 2000: 105). Existing *ex ante* rules designed to promote domestic plurality, media groups were arguing, was incompatible with the maximisation of the economies of scale and scope of the, then, new multimedia possibilities (Doyle, 2002: 90). The subsequent BA 1996 was then introduced with the declared purpose of enabling digital terrestrial broadcasting (Gordon, 2009: 53-4). However, the new act also abolished limits on the number of licenses allowed in commercial broadcasting (Scriven & Lecomte, 1999: 9) and, instead, replaced them with a maximum cap of 15% share of total television audience (Coleman & Rollet, 1997: 25). However, newspapers with more than 20% of national market share could still not hold television licenses (Scriven & Lecomte, 1999: 9). Nevertheless, those restrictions did not apply to Murdoch's interests, namely Sky, because, despite its critics, the satellite service was interpreted by policymakers and regulators as non-domestic. Actually, News Corp influence seems far from being diminished in current times. As Des Freeman, Benson, Gerbaudo, Garcia, Parthasarathi, Chan and Thompson (2012) acknowledge, "[News

⁵⁴ In fact, BSkyB (the merger between Sky and BSB (British Satellite Broadcasting)) is the operator of the Sky brand in the UK.

Corp] has a presence in all the major media markets and a major influence on politics, business and everyday life.”

As a result of the relaxation enabled by the BA 1996, a succession of takeovers took place. After only one year of the new act, the original 17 ITV licenses were shared by only three companies (Conboy, 2010: 62; Coppens & Downey, 2001: 338). The act also permitted a further increase in the number of channels by separating FTA broadcasting into two services, transmission and content, which allowed for multiprogramming (Campbell, 2008: 1/479; Conboy, 2010: 62).⁵⁵

Digital terrestrial television started transmission in 1998 with 12 channels as a Carlton and Granada paytv service branded as *Ondigital* (Starks, 2007: 47-48). However, the isolated digital initiative could not compete with cable and satellite. In 2000, before the collapse of the digital system, but with clear signs already of its commercial failure, a coalition of regulators, broadcasters, manufacturers and viewers established a roadmap for the completion of a coordinated switchover, from analogue to digital, that would include all broadcasters (ibid: 87-92). *Freeview* was proposed and the service was launched in 2002, at the same time that *Ondigital* was discontinued (ibid: 83-4).

If from one side DTV consolidated as a competitive option to paytv, the other platforms sought integration in order to remain competitive. One of the most prominent examples of this strategy, arguably, is BSkyB. Controlled by American News Corp, the British company appears as a highly integrated audiovisual company as it commercialises a platform, the Sky DTH service, acts as a broadcaster (by producing several channels) and offers telephone services to their customers.⁵⁶

That opening of new channels and of distribution platforms brought consequences for the amount of national content needed. Although those new outlets represented new opportunities for national producers, many of those offerings relied on imported content (and, in the case of overall Sky packages, on football). It was in this scenario where national content had to compete to be included

⁵⁵ See Annex 2 for technical details.

⁵⁶ Using unbundled incumbent's copper lines.

in the new channels offered by Freeview, cable and satellite that the last piece of broadcasting legislation was introduced in the UK: the Communications Act (CA) 2003.

The new statute consolidated the preceding BAs 1990 and 1996, the Telecommunications Act 1984 and the Cable and Broadcasting Act 1984. The timing for the introduction of this new norm came from the EU as a result of the new telecommunication framework approved in 2002. However, the UK used it to further liberalise the existing framework. The new act increased the relaxation of the ownership rules set by the previous acts and reinforced an *ex post* approach to media concentration, as the act allows the Secretary of State to intervene in the case of mergers endangering the public interest (Parr et al., 2005: 85). The act liberalised the ownership of Channel 5, but still maintained a set of rules for the holders of ITV licenses: a holder cannot own a newspaper with more than 20% national market share and a holder cannot own any newspaper with more than 20% of the local market share in any area of the license (ibid: 87).

Another important feature of the CA 2003 is its joint remit concerning matters of both broadcasting and telecommunications. For these purposes the act created a new unified regulatory agency, Ofcom, substituting five existing bodies that used to regulate broadcasting and telecommunication services (National Archives, 2003).⁵⁷ As a result of this condensation, and more importantly with regards to national content production and distribution, all agents involved with the audiovisual industry, independently of the distribution technology used, have to comply with one piece of legislation and one regulatory body only. The BBC is the exemption: Ofcom do not regulate its content, it is a matter for the BBC Trust (Banerjee & Seneviratne, 2006: 73-4, 81-4).⁵⁸

Robertson and Nicol (2008: 883) remark that the CA 2003 had two distinct purposes: the protection of citizens' interests, with regards to the access to high quality audiovisual services, and the protection of consumers, by ensuring competition in all communication services. However, the

⁵⁷ The existing bodies were: i) Broadcasting Standards Commission (with responsibilities for standards and fairness in broadcasting); ii) Director General of Telecommunications (responsible for Oftel -Office of Telecommunications); iii) Independent Television Commission (authority for licensing and regulating television services in the UK, including cable and satellite); iv) Radio Authority (similar to ITC but for radio services); and v) Secretary of State (with respect to spectrum management).

⁵⁸ In the British legal system, the license of the BBC is granted by Royal Charter and the public remit, where content obligations are detailed, is settled directly with the Secretary of State.

introduction of the act, the creation of the converged agency Ofcom and the overall tendency of promoting digital convergence were also regarded by some, like Des Freedman (2008: 95) and Murdock (2000: 39), as being pro-market policies with the objective of diminishing PSB's role in the digital convergence era. In fact, the CA 2003 diminished the distinction between public and commercial providers, as the new act levels all traditional terrestrial channels (BBC, ITV, Channel 4 and Channel 5) into one general and broad category of PSBs, as will be discussed in Chapter 6 in more detail. Nevertheless, as will also be seen in that chapter, the act also contains specific clauses that are considered as crucial for the development of national content industries.

5.4 France – competing models within terrestrial broadcasting

As already mentioned in this chapter, until the 1980s broadcasting in France was a state monopoly. While in Britain in 1982 Channel 4 was being created, the socialist president Mitterrand reformed broadcasting legislation and ended that monopoly (Des Freedman, 2003: 1-3; Kuhn, 1995: 172-3). The new broadcasting statute of 1982, while opening the broadcasting market to private companies, also rearranged the state broadcasting companies and created a new regulatory authority to supervise broadcasting (Kuhn, 1995: 172-3). As a result of the end of monopoly, in 1984 the subscription channel Canal Plus, controlled by the French publishing group Havas, was launched (ibid: 178).

Although the number of channels of FTA broadcasters in France then equalled the existing ones in the UK, the channels had dissimilar characteristics. In France there were three PSBs: TF1 and Antenne 2, with nationwide programming, and the regionalised France Regions 3. All three channels were financed by a mix of TV license and advertisements. Contrary to the British BBC-ITV duopoly with distinct origins of income, in France state broadcasters competed for audiences and for advertisement, hampering potential newcomers. With the end of state monopoly, Canal Plus was launched as a subscription alternative to the existing public broadcasters. Whilst in Britain Channel 4 was a state-owned publishing house for the delivery of different kind of programmes produced by independent companies and was not to compete with the established channels, in France Canal Plus concentrated on feature films (with a high regulatory commitment to national

productions as will be seen in Chapters 6 and 7) and football (Kuhn, 1995: 180). Mitterrand's liberalisation of the airwaves was completed with the launch of privately owned La Cinq and TV6 in 1985 (Regourd, 2001: 256). According to Coleman and Rollet (1997: 35-36), the doubling in the number of air channels by using commercial media was highly controversial as the Italian media mogul Berlusconi and other "friends of the French government" were initially awarded these licences.

In contrast to the British case, Mitterrand's arrangement allowed for the new over-the air paytv broadcaster to be nationally controlled. While in Britain BSkyB is controlled by an American-based company, in France Canal Plus (owned by global, albeit French-based, Vivendi) still maintains a high proportion of national shareholding (for details on corporate information see Vivendi, 2011b).

In 1986, as a result of a turn to a new right wing government, a new act was proposed for broadcasting. Prime Minister Chirac introduced the Freedom of Communication Act (FoCA) 1986. Among other things, the Act allowed for the privatisation of the most important broadcaster, TF1, controlled by the national group Bouygues, and reorganised the regulatory authorities, creating the CNCL (National Commission for Communication Liberties) which would regulate telecommunications and broadcasting (Coleman & Rollet, 1997: 35-6; Kuhn, 1995: 191-2). The government also negotiated with the broadcasters of La Cinq and TV6 (afterwards renamed as M6) and a compromise solution was found which allowed the revoking of the licences and reassigning them to new owners, but with Berlusconi still having a stake in the latter channel (Kuhn, 1995: 188; Regourd, 2001: 256). Because of political interference, among other reasons, the CNCL shortly gave way to the current CSA (Kuhn, 1995: 105-6). Broadcaster La Cinq faced major financial difficulties, as it did not manage to compete with TF1, and could not establish itself as a specialist upmarket channel. In 1992, it ceased broadcasting (Kuhn, 1995: 200-1) and the transmission infrastructure was passed to a newly created channel, Arte, co-owned by French and German PSBs (Regourd, 2001: 257).⁵⁹

⁵⁹ Arte is a bi-national channel owned by France (50% - France Television (22.5%), government (12.5%), Radio France (7.5%) and Institut National de l'Audiovisuel (7.5%)) and Germany (50% - ARD (25%) and ZDF (25%)) (Arte, 2012).

As in the other countries, during the 1980s and 1990s cable and satellite were also developed in France. The popularisation of both technologies was initially sponsored by the government but achieved low success due, partially, to lack of interest from audiences in paying subscription fees in times when the availability of free channels was increasing (Dutton & Vedel, 1992; Kuhn, 2000: 326).

There were still other minor amendments to the FoCA 1986. One led by a right-wing government in 1994, which relaxed the ownership rules, changing from 25% to 49% the maximum interest a single stakeholder could hold in a broadcasting channel (Regourd, 2001: 257). It has to be remarked that this relaxation, as in the British case, was aimed to increase the economic strength of private media players in times of increasing transnationalisation of the media (Kuhn, 2000: 331). The year 2000 was a time for rearranging the public sector. The left-wing parliament reorganised the French public channels under a new conglomerate France Televisions (Regourd, 2001: 257). However, at the same time that a major national entity was created, the new arrangement also aimed to diminish PSB's relevance in the national advertisement market by reducing their maximum advertising times (ibid).

Four years after the creation of the new PSB, the roll-out of digital television was decided in France. As was the case of the CA 2003 in Britain, the adoption came as a result of the new European telecommunications framework (Regourd, 2007: 172). Four new laws were enacted in 2004 and among them the Confidence in the Digital Economy Act and the Electronic Communications and Audiovisual Communication Services Act modified the FoCA 1986 (ibid). The aim of these alterations was to support the digital switchover and to “modernize and harmonise the conditions of regulations by the CSA” (ibid). While these 2004 reforms can be considered as technical measures in order to solve conflicts between regulators and gaps in legislation due to the new services enabled by digital convergence, the introduction of DTV was significant. As Starks (2007: 176) noted, France was a late entrant to DTV, only launching its system, branded plainly as *Television Numerique Terrestre* (TNT), in 2005. Iosifidis (2011) attributed the delay to the long

discussions over the standard to be adopted and the implications on national industries.⁶⁰ Four years after its launch, according to the CSA (2009b), DTV take-up in France, in 2008, was still increasing and had a lower penetration figure than in the UK. However, the same effect of containing the increase of paytv (in its various forms) is also noted in that country, as will be seen in more detail in Chapter 8.

A last significant amendment to the FoCA 1986 was introduced by the 2009 reform conducted by the right-wing presidency of Sarkozy. The new rules progressively eliminated advertisement from PSBs with the expected complete elimination in 2011, and re-introduced the appointment of the head of the broadcasting company by the Presidency (Ibarra, 2009). Surprisingly that practice dates back to the 1960s 'fashion', when president De Gaulle appointed the head of the ORTF (Office de Radiodiffusion-Télévision Française), the former public broadcasting conglomerate (Kuhn, 1995: 122-5).

5.5 Brazil – perpetuating commercial prominence

The Brazilian governments adopted a liberal policy in regard to licensing broadcasters from the beginning of television. Brazil, which is a federation of states, uses a media system similar to the one used in the USA (and in Britain in the case of ITV), where licenses are issued per city (or locality) to local bidders subject to certain media ownership limitations.⁶¹ Thus, in order to form a network and gain national coverage, broadcasters have to construct commercial agreements with other broadcasters in other cities, the affiliates, in order to retransmit their programming. As a result, when the 1980s arrived, Brazil already had six FTA networks with fairly nationwide coverage, licenses granted during the military regime of the 1964-1985 period (Lash & Lury, 2007: 156; Leal Filho, 1988: 31-3) and unchanged legislation dating back to the Broadcasting Code 1962 and the Decree-Act 236/1967 (both still in place). Unlike the EU members which constructed strong PSBs over a period of time, Brazilian FTA broadcasting is overwhelmingly dominated by commercial media. In the 1980s there were five major commercial networks operating in the

⁶⁰ France has a history of developing alternative standards as was the case with the *Secam* colour television system and *Minitel*, arguably, a precursor of the internet.

⁶¹ The Decree-Act 236/1967 allowed a maximum of five commercial television broadcasting licenses per broadcaster in the VHF band.

country- Globo, SBT, Record, Manchete, Bandeirantes -, and one regional channel owned by the state (as the federated state), normally networked with the federal channel Radiobras (Bolano, 1999). In fact, the federal presence in broadcasting was so weak that, in 2007, when the new federal PSB was created (TV Brasil), it absorbed a legacy of only three stations from Radiobras (Valente, 2008b).

Returning our analysis to the 1980s, while in the UK and France governments were opening the remaining spectra up to competition, during the 1980s and 1990s Brazil was consolidating networks and introducing paytv systems. In fact, the first encrypted-to-air broadcasting channels (similar to the Canal Plus model in France) were allowed in 1988 for national media players (Caribe, 2010). The service had very timid and local success though.

What enabled the Brazilian authorities to maintain the same broadcasting legislation since the 1960s was the introduction of new paytv services without interfering with existing commercial broadcasters' businesses. In fact, the 1980s guaranteed a continued protection to commercial broadcasters. The constitution enacted in 1988 in the re-established democracy forbade foreign ownership of broadcasting and granted explicit space for private broadcasters as it stated, in Article 223, that the licensing of broadcasting "should observe the principle of complementarities between private, public and state-owned systems" (Planalto, 1988).

The regulatory standstill state continued until the neo-liberal reforms arrived in Brazil with the presidency of Cardoso. The first change was the 1995 amendment in the Brazilian constitution which separated FTA broadcasting from telecommunication (E. O. Nunes, Nogueira, da Costa, de Andrade, & Ribeiro, 2007: 143). That segregation enabled two things: the privatisation of telephony without limits to foreign ownership and enabling those companies to operate paytv systems. The second change, from the same year, was the introduction of onerous public biddings for the licensing of commercial channels (Lima, 2007). Those two alterations were beneficial for the already established networks as the auctioning process increased the entry barrier for new players to broadcasting. Additionally, the new rules were also beneficial to commercial broadcasters

because, although the new rules enabled the (inevitable) entrance of paytv systems, FTA services remained locked to foreign ownership.

Although cable started in Brazil with local operations in 1989 (Possebon, 2009: 25), it was only after the constitutional amendment that cable was regulated with an specific piece of legislation. The Cable Act 1995 limited foreign ownership to less than 49%. Not surprisingly, the most significant consolidated national operator that emerged from those rules was Net Servicos, owned by Organizacoes Globo owner of TV Globo, the most powerful local media conglomerate.⁶² Thus while the opening of paytv allowed the entrance of international channels, the biggest producer of national content was in a very advantageous position. However, that prominence came at a huge price. Globo's venture almost bankrupted the broadcaster in the late 1990s (Possebon, 2009: 175). At a time of high inflation rates and after a substantial devaluation of the currency, Globo, which had invested in cable infra-structure with the aid of foreign loans, was forced to sell their stake in Net Servicos by 2004 (Lash & Lury, 2007: 161; Possebon, 2009: 207-10). The cable operator is now technically controlled by Telmex.⁶³

But the launch of cable also allowed the creation of new broadcasters with a focus on citizenship. The Cable Act 1995 was responsible for the creation of a legacy of numerous community and university channels throughout the country. It created, as must carry, channels for the local assemblies, the Lower House (*Camara dos Deputados*), the Upper House (*Senado Federal*), the Supreme Court, universities, educational and community. However, due to a lack of funding opportunities most of these channels only exist on cable. As for the educational channels, cable distributors normally use governmental owned broadcasting stations which usually retransmit programmes generated by the federal government broadcaster Radiobras (later to be changed to

⁶² The biggest Brazilian broadcaster group Organizacoes Globo, or simply Globo (or 'a Globo' as they are known in Portuguese) is a Brazilian media group owned by the Marinho family and is the holding company of Rede Globo (the FTA broadcaster), O Globo (newspaper), Globofilmes (film producer), Globosat (paytv wholesale broadcaster) and is a stakeholder in Net Servicos (cable) and Sky's (satellite) operation in Brazil.

⁶³ Originally the Mexican telephony incumbent, now a global conglomerate whose owner, Carlos Slim, is considered the richest man in the world by Forbes Magazine (as in 2011).

TV Brasil as will be discussed below) or by regional state broadcasters, such as TV Cultura (Sao Paulo) or TVE (Rio de Janeiro).⁶⁴

In 1996, satellite paytv broadcasting (DTH) started in Brazil. As it was considered a telecommunication service and not ruled by the Cable Act 1995, total foreign ownership was allowed without the need of any new act. It was started by the American company Direct TV, associated with Venezuelan Cisneros, Mexican MVS and Brazilian group TVA, the latter owned by the major publishing company of Latin America, the Brazilian Grupo Abril (Beceiro, 1999; Sinclair, 1999: 72). Rapidly, Globo associated with Sky and Mexican Televisa and launched another DTH operation in the country (Beceiro, 1999). In 1997 another paytv encrypted system over the air was also launched: the MMDS (Multichannel Multipoint Distribution Service). Different from the encrypted monochannel introduced in 1988, this terrestrial platform used the airwaves to distribute up to 31 encrypted channels to subscribers (Possebon, 2009: 72). The major player for this system was again TVA (Sinclair, 1999: 72). However, as this latter system was a competitor to cable and satellite, and in the absence of effective competition enforcement, Globo and all their related content was systematically denied to these operators. I will return to this point shortly.

With all major distribution technologies in place, but still in the analogue world, the late 1990s and early 2000s were times of consolidation of broadcasters in Brazil. The first major change could be considered the acquisition of TV Record in 1990 by a Pentecostal religious group (Mariano, 2004). This event is particularly important because of the different source of financing available for this commercial network. In addition to adverts, this network relies on religious donations. As the second major national move, after bankruptcy TV Manchete was sold to Rede TV in 1999 (Pieranti, 2006). In the DTH service, business consolidation and repositioning also occurred. All involved Globo and their channels, the nation's television channels with the highest audience ratings (and, notably, the owners of the distribution rights to football). Later on in 2004, as a result of commercial agreements, Direct TV remained the sole DTH operator in Brazil (although using the Sky brand and with Globo channels' in their line-up). In the late 2000s, telephony incumbents also launched their

⁶⁴ Brazil is a federation of States. TV Cultura is owned by the Sao Paulo state and is often referred to as the precursor of PSB in Brazil due to the existence of a curator board. TVE was owned by a public charity foundation ACERP (former Fundacao Roquette Pinto) based on the Rio de Janeiro state. TVE and ACERP were later absorbed by the EBC (TV Brasil), the new federal PSB.

own branded DTH services using practically, in terms of audience shares, the same channels as the ones existing on Sky, i.e. with Globo channels, and, of course, football. Currently Globo is reducing its participations in paytv distribution services. While still holding a small share, the Brazilian broadcaster sold its cable operations to Telmex, as mentioned earlier on, and their DTH's to Direct TV (Churchill, 2009; Lash & Lury, 2007; Rosa, 2010: 161).

It is important to note that, as already shown with the examples of Sky in Britain and Canal Plus in France, securing football is also 'key' in Brazil. However, as in the latter country there are no must-offer rules, paytv companies not affiliated with cable Net Servicos (mainly MMDS operators) took Globosat (Globo's company that produces their paytv channels, including sports) to the Brazilian competition authority in order to gain access to their channels. In the proposed Term of Adjustment Agreement, in 2006, nearly twenty years after the launch of DTH and MMDS, the council ruled that Globosat must offer their channels without discrimination and under a fair, but nevertheless undisclosed, pricing (Telesintese, 2007). The decision which could have rebalanced the paytv services, levelling access to the most desired nationally produced content came maybe too late as, in 2008, the main MMDS operators were bought by Sky and competition with that service was finished (Telesintese, 2008a).

One of the last developments of broadcasting in Brazil was also digitalisation. While on paytv platforms digitalisation was left to the operators, and can be regarded as a simple implementation of the natural technological and market evolution without interference from the government, on the FTA broadcasting service it was an intricate decision where broadcasters once again needed the help and protection from the state. As already mentioned in Chapter 3, the Brazilian government eventually decided to give the go ahead to DTV in 2007; two years after France and five after the UK's re-launch. However, as for 2011, the Brazilian legal model did not allow multiprogramming for commercial broadcasters and hence the new platform was blocked to possible new entrants. It is uncertain if multiprogramming will ever be allowed in commercial FTA in Brazil. It is not in the interest of commercial broadcasters to divide the advertisement revenues with newcomers (Cavalcanti, 2009; Tavares & Paz Filho, 2009), as it is not on the government radar to make DTV compete with paytv. However, on the side of the state-owned channels, multiprogramming is being

developed as a form of increasing coverage while reducing roll-out costs. Currently TV Camara (Lower House) and TV Senado (Upper House), and to a minor extent the TV Justica (Supreme Court), have FTA channels in some of the Brazilian capitals and, in association with the local and regional assemblies, are launching DTV multiprogramming ventures in major Brazilian cities (Camara dos Deputados, 2011; SET, 2008).

The Brazilian implementation has some similarities to the European cases discussed. Like France, Brazil is a late entrant to this technology and, as in the French case, profited from the evolution of the technology. Also, like France and Britain, FTA television is very present in households. Hence the switchover is expected to have a high impact on the population. The similarities nevertheless finish at this point. In Brazil the implementation of DTV does not have the objective of increasing the number of broadcasters. DTV was not designed to be a competitor to paytv. Moreover, the new frequencies were given free of charge to established broadcasters and without any commitment of usage or of coverage.

On the contrary, the Brazilian choice for adopting the Japanese ISDB as their DTV standard is another example that illustrates the power of commercial broadcasters. The government, after extensive testing and consultations with manufacturers and broadcasters and after long negotiations with representatives of the other standards (the European DVB and American ATSC), decided in 2006 for the Japanese-based system. From the broadcasters' point-of-view, the choice was regarded as more appropriate, as it would incorporate MPEG-4 allowing HDTV to be available from the service's launch. Also, broadcasters and government were looking for a mobile television. The European standard, which could be operated by telephony companies, was considered a menace for broadcasters, as it could introduce telecommunication giants into the broadcasting field.⁶⁵ From the government's point of view, the Japanese system was also considered the best option in terms of transferral of technology, with the possibility of building a semiconductor industry

⁶⁵ As the Japanese system transmits the mobile content from within the same DTV channel, broadcasters could transmit both signals without the need of additional frequencies or tier operators.

in the country and with Japan agreeing to incorporate Brazilian innovations, such as the Ginga middleware that runs on the set-top boxes (Estrada, 2009; Mazar, 2008: 97).⁶⁶

One year after deciding the go ahead for DTV, the public administration also chose to launch the new federal PSB, although using the old analogue technology. Again, without altering FTA rules, and without provoking any spat with commercial broadcasters, the 'rulers' of FTA, the Brazilian government under the presidency of left-wing Lula, decided to implement an improved federal public broadcaster. In 2007, the EBC, a PSB with a certain level of editorial, administrative and financial independence, although funded directly by the government, was eventually created. At least as foreseen in the legal provisions, the new PSB was launched, not to be another new state-owned governmental broadcaster but to provide for a genuine public service. It has a board (appointed by the government) and a governing structure which could be inspired by European's PSBs. Lula, who suffered from TV Globo in the coverage of the 1989 presidential debate, offered a public counterpoint to the power of the commercial broadcaster. Nevertheless, some voices of the press regard the creation of the EBC and their channel TV Brasil as a step backwards to state intervention, demagoguery and propaganda (Azevedo, 2007; L. Nunes, 2008). The facts are that the governors are appointed by the head of state, albeit with a fixed mandate, and its budget is far more modest than, for instance, Rede Globo's: £130m against £3 billion, in 2009 (EBC, 2009; Werzbitzki, 2010).⁶⁷

Another implication that derives from that small budgetary commitment is the small coverage expected from the new public channel. Despite the fact that the PSB was created nearly two years after DTV's launch in that country, the PSB Act 2008 ignored the social concern of digital coverage. Actually, the act ignored even setting analogue coverage obligations, perhaps due to the fact that the old system would be phased-out in the medium term, in 2016 (for details see Lauterjung, 2008; Martin, 2008).

⁶⁶ The Brazilian choice proved to be influential. Several other Latin American countries (Argentina, Chile, Peru and Venezuela) also adopted the standard. Furthermore, in 2010, according to the Brazilian Ministry of Communication declarations, the 14 countries of the Southern African Development Community decided to review their decision on DVB and would assess the ISDB (Proenca 2010).

⁶⁷ Values for Rede Globo include other revenues from the parent organisation Organizacoes Globo.

Certainly there is a political component that partially explains why commercial broadcasters are so influential in Brazilian policymaking, and why new services were included without jeopardising their leadership. There are well known strong ties linking broadcasting and politicians. Actually, many politicians are broadcasters themselves, in a practice called *coronelismo eletrônico* or 'electronic clientelism' (Bignell, 2004: 80; Fox and Waisbord, 2002: 10, cited in Sinclair, 2010: 512).⁶⁸ This practice leads to the extremely controversial issue of members of the congress, who may be regarded as public agents as they are invested in public authority, celebrating contracts (legally, licences are contracts) with the public administration (signing, hence, for both sides). Despite the legal discussions, the ownership links between politicians and broadcasting companies in Brazil have been broadly reported, and there is an outcry at the impropriety of law makers being in a position of being able to control the media. According to Christofletti (2003), a quarter of broadcasters are owned by politicians and during the 1999-2001 period, almost 80% of the licenses were granted to members of the congress. In a report conducted by an independent agency, 5% of the state deputies, almost 10% of federal deputies and nearly a third of senators held interests in broadcasting companies in 2006 (Castilho, 2006; Castilho & Amaral, 2006). Certainly, political ownership has a crucial impact on democracy and media impartiality.

Although FTA is still governed by the 1962 legislation, there is a perception from some sectors of the society that this situation should change. A national consultation process (Confecom - National Communication Conference), sponsored by the federal government and held during 2009, indicated the need for regulation introducing regional, independent, cultural and educational content in all forms of broadcasting (Charao, 2009; Haje, 2010). Another suggestion for a change of attitude towards unregulated broadcasting was the approval of the bill that proposed new rules for paytv, the so-called PL-29. The bill was discussed from 2007 to 2010 in the Lower House by four Committees and, after more than one year of negotiations in the Senate, the bill was finally approved, receiving the Presidential seal in September of 2011.⁶⁹ The Paytv Act 2011 which scraps any limit to foreign capital in any paytv distribution technology, involved intricate negotiations because of the quota system for national content that was included during its proceedings (that will

⁶⁸ It has to be remarked that, according to Brazilian legislation, politicians are allowed to own broadcasting companies. What is not allowed is to hold a managerial position in those companies.

⁶⁹ Paytv Act 12.485/2011.

be discussed in detail in Chapters 6 and 7). The move received heavy opposition from national broadcasters and international channels who lobbied against its approval (Haje, 2009).

Both the approval of the paytv bill and the Confecom may be a sign of change for Brazilian broadcasting policy. However, the political influence of commercial broadcasters should not be underestimated. In another even earlier legislative action, the Lower House, as early as in 1991, had approved a bill which introduced content rules for FTA broadcasting.⁷⁰ However, since 2003 it rests “in peace” in the Senate. Brazilian broadcasting history shows that there is little room for radical changes without colliding with the interests of major networks.

After having discussed the countries of these case studies separately, the following section will summarise the main characteristics of each country’s broadcasting landscape.

5.6 Summary of developments

Table 7 summarises in chronological order the changes that occurred in the broadcasting legislation in each of the selected countries.

⁷⁰ Bill PL-1135/1991 proposed by Deputy Jandira Feghali.

Table 7 – Relevant regulatory instruments and their related main purposes of the selected countries

Period	UK	France	Brazil
-1980s			Broadcasting Code 1962 and Decree-Act 1967 (*)
	Broadcasting Act 1981 (creation of Channel 4)	Broadcasting Act 1982 (end of monopoly, start of Canal Plus, La Cinq and TV6)	
	Cable and Broadcasting Act 1984	Freedom of Communication Act (FoCA) 1986 (privatisation of TF1)	Federal Constitution 1988 (definition of private, state-owned and public broadcasting)
1990s	Broadcasting Act 1990 (allocation of Channel 5, introduction of cross-ownership rules)	1994 FoCA Amendment (relaxation of cross-ownership rules)	1995 Constitution Amendment (separation of broadcasting from telecommunication)
	Broadcasting Act 1996 (DTV, relaxation of cross-ownership rules)		Cable Act 1995
2000s		2000 FoCA Amendment (reduction of advertisements in public channels)	
	Communication Act 2003 (further relaxation, ex post regulation)	2004 FoCA Amendment (new regulatory regime) E. Comm. And Audiovisual Comm. Services Act 2004 (DTV)	DTV Decree 2007
		2009 FoCA Amendment (end of advertisements and presidential appointment of head of PSB)	PSB Act 2007 (creation of PSB EBC, producing the TV Brasil channel)
2010s			Paytv Act 2011 (foreign ownership in paytv)

Note: (*) Those legal instruments from the 1960s needed to be included as are the codes governing broadcasting services in Brazil throughout the analysed period.

The overview of Table 7 shows that while both European countries experienced roughly the same timing and purposes for the introduction of new legislation leading to new channels, in Brazil the privatisation of telecommunication and cable was introduced later on. With regards to DTV there is an eleven year gap between the introductions of that platform in all countries, with the UK being the earlier adopter. Additionally, in Britain more liberal ownership regulations started to be introduced in

1996, while France re-introduced a degree of state intervention and potentially restricted the financial sources for their PSB. In the late 2000s and during the current decade, Brazil modified the broadcasting landscape, strengthening the PSB and introducing national content policies in the same period which liberalised foreign ownership to paytv services.

The charts represented in Figure 4 show how similar the regulatory setups of our case studies are. The PSB executives are appointed by the government in all three cases, although in Britain the indication has to be, eventually, approved by the parliament.⁷¹ All three countries have a specialised agency for the film industry, but it is only on the Brazilian case that the institution has to monitor national quotas for the paytv services. Additionally, in terms of the differences between countries, Britain is the only country that has a unified agency for broadcasting and telecommunications.

⁷¹ It has to be noted that, unlike in presidential countries, the government must have the majority of the parliament. Therefore, it is highly unlikely that a proposed candidacy for the governing body would be overturned by the parliament.

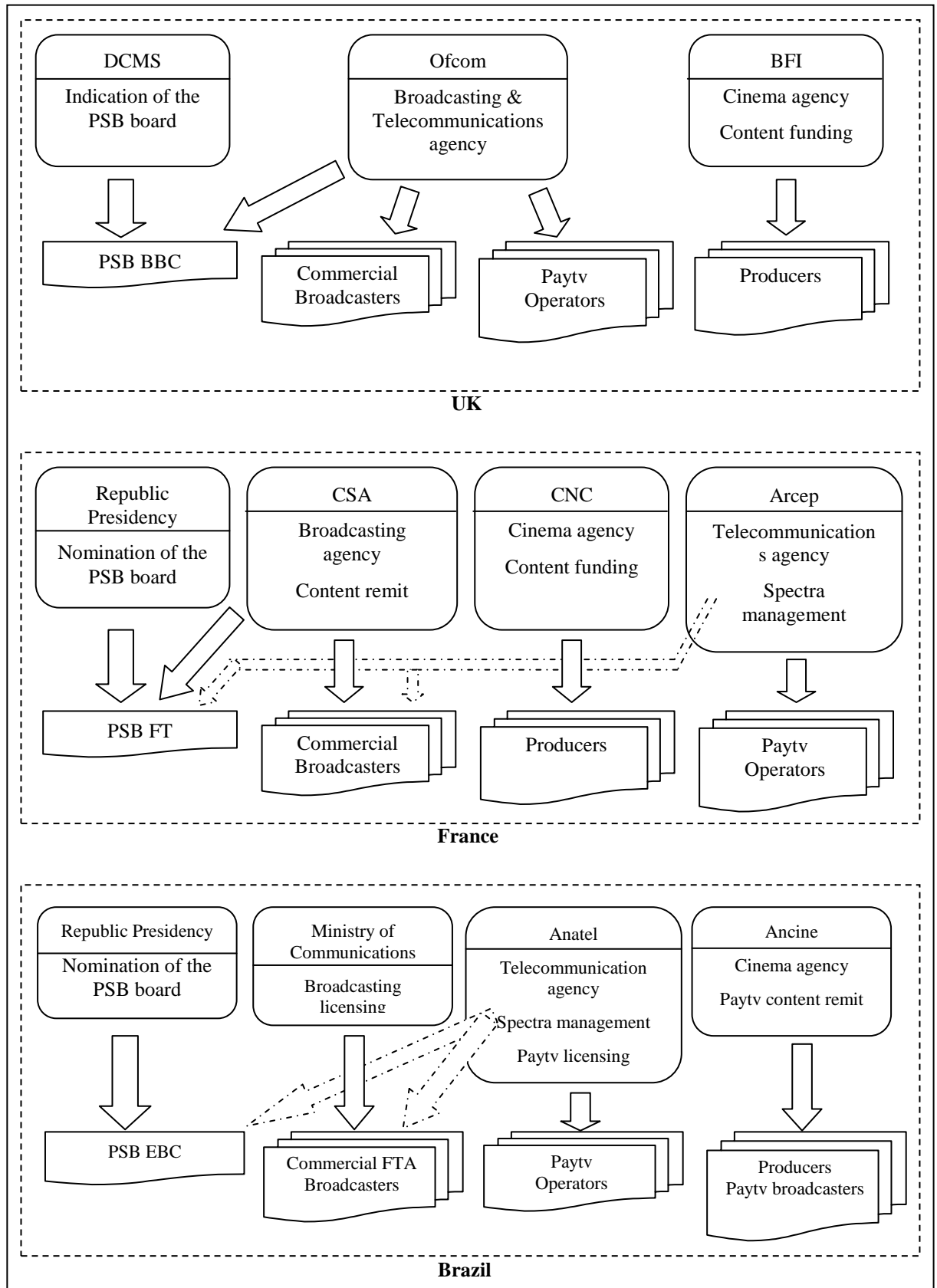


Figure 4 –Regulatory spheres of the case studies

Source: Author's

The following Figure 5 synthesises the occupancy of the FTA spectra of the selected countries.

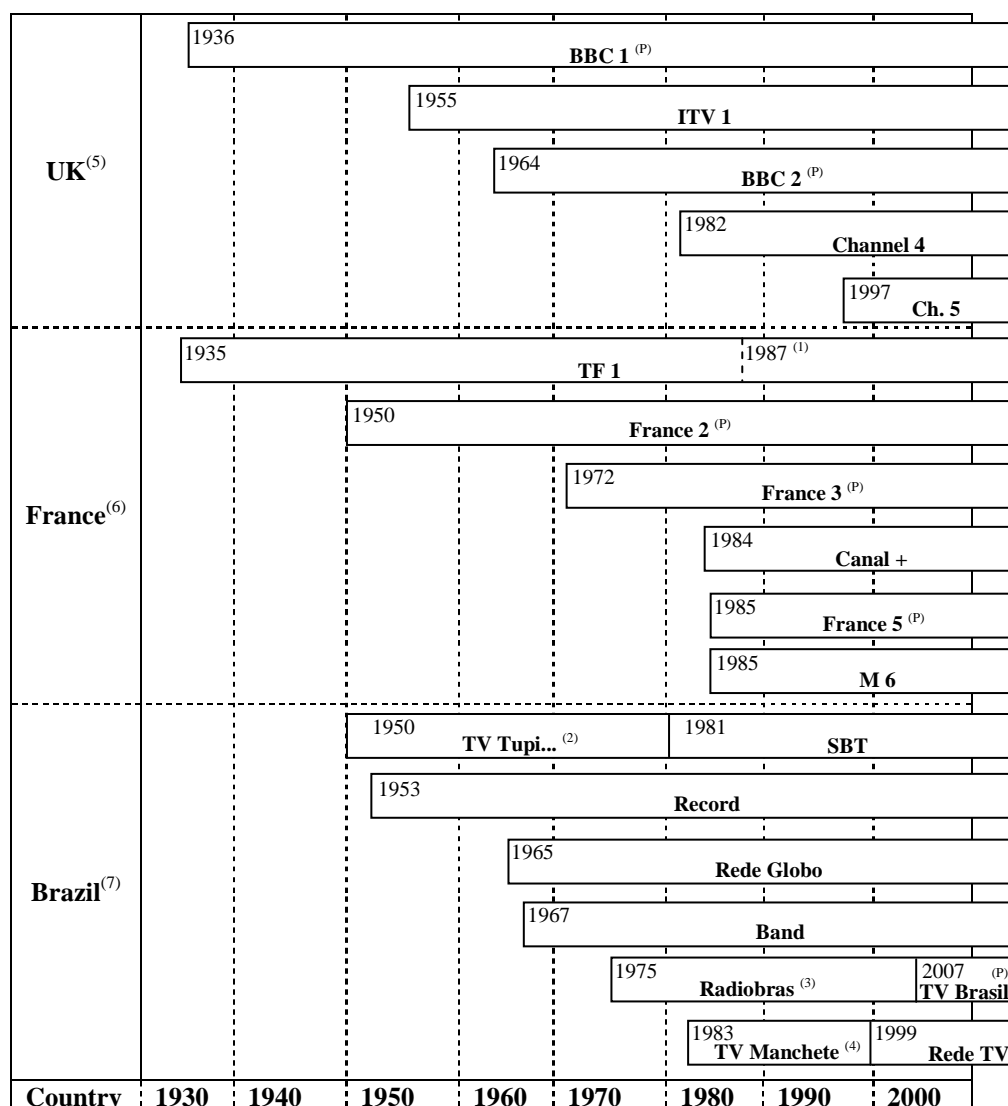


Figure 5 - Start-up of main terrestrial channels by country

Sources: broadcasters' official websites and (5) (Coleman & Rollet, 1997: 34); (6) (Coleman & Rollet, 1997: 35; Kuhn, 1995: 109) and (7) (Bolano, 1999; Mariano, 2004; Pieranti, 2006).

Notes: (1) Date of privatisation. (2) Started as TV Tupi and after several changes running as SBT from 1981. (3) Started as Radiobras, transformed into TV Brasil since 2007. (4) Started as TV Manchete and changed to Rede TV since 1999. (P) National PSB.

As can be seen from the preceding Figure 5, the increasing occupancy of FTA broadcasting has certain resemblance between the countries. Although Brazil is a later entrant to the service when compared with its counterparts, by 1983 the country already had more networks in place than the UK and France. From that year onwards until 2002, the year of the British re-launch of DTV, the occupancy of the airwaves was fairly similar amongst the examples. As was discussed in Chapter 1, after digitalisation the number of channels available in the various platforms experienced an

exponential growth, and since then the UK has had more channels than France and substantially more than Brazil. However, as a general rule, it is reasonable to summarise that as a result of the liberalisation of the service, in all three countries there is a coexistence of public and private FTA broadcasters. Nevertheless, the relative importance (both in economic and viewing terms) of those broadcasters varies significantly between countries, as will be seen in Chapter 8.

Although the market assessment will discuss audiences' shares in depth, a snapshot of those figures will help in this final comparison of different broadcasting systems. As with digitalisation and digital convergence, TV channels may be accessed by different technologies and Table 8 shows the most watched TV channels independently of the distribution platform used.

Table 8 – Audience shares of main channels in 2010

Category	UK ¹ (Nov/2010)		France ² (2010)		Brazil ³ (2010)	
	Channel	Share (%)	Channel	Share (%)	Channel	Share (%) ⁵
Traditional FTA	BBC 1 (P)	21.3	TF1	24.5	Globo	46.6
	ITV 1	18.3	France 2 (P)	16.0	Record	17.8
	BBC 2 (P)	6.7	France 3 (P)	10.7	SBT	13.7
	Channel 4	6.0	M6	10.4	Band	5.5
	Channel 5	4.5	Canal Plus	3.1	Rede TV	2.6
			Arte (C)	1.6	TV Brasil (P)	- (4)
	Total	56.8	Total	66.3	Total	79.9
Main Digital Channels	ITV 2	2.0	France 5 (P)	3.2		
	ITV 3	2.0	TMC	3.3		
	BBC 3 (P)	1.3	W9	3.0		
	Cbeebies (P)	1.3	Gulli	2.2		
	E4	1.2	France 4 (P)	1.6		
	Sky Sports 1	1.1				
	Total	8.9	Total	13.3		
Smaller channels and other media	Others	34.3	Others	20.4	Others	18.0

Sources: author's adapted from sources as indicated: (1) (BARB, 2010); (2) (IP Network, 2011: 172), (3) (Grupo de Mídia, 2011: 294)

Note:

(4) TV Brasil started in December 2007 and does not have national coverage yet.

(5) Excludes other uses of the television set (videogames, internet, etc), measures broadcasting channels only ('pure TV').

(P) PSB; (C) Co-owned by French and German PSBs (see note 59).

As seen in Table 8, the traditional FTA channels are still the most viewed channels. That assertion is in line with Papathanassopoulos and Negrine (2011: 171), who note that in the age of digital convergence it is the content that counts, not the distributing medium. Table 8 also shows another characteristic of digital times, which will be analysed in detail in Chapter 8: PSBs in the UK and France have taken advantage of the 'long tail' enabled by digitalisation. Their spin-off channels clearly secure additional viewers.⁷²

5.7 *Conclusions*

During this chapter I have shown the recent developments in the mediaspace of the selected countries. I have discussed how the country's media systems are converging into a similar model, where there is a coexistence of public and private broadcasters competing for the attention of the viewers on different delivery platforms. All three countries are going digital and there is a proliferation of channels and services. The discussions have suggested that while there is an overall liberalisation of broadcasting, PSBs are still important agents, and policies still reflect this reality. As the following chapters unfold, it will become clearer to the reader that, in this competitive model, policymakers are tightening the regulation of PSBs whilst liberalising the media overall. Most importantly for this thesis, perhaps, the analysis of the regulation will also indicate to what extent national content is fostered in current digital times.

The next chapter will start the three step analysis of the content-oriented regulation, as devised in Chapter 4. The first step, focus of the next chapter, will examine how the socio-cultural objectives of broadcasting services are promoted by the enacted legislation. By studying the actual terms of the regulations, I will identify the socio-cultural concepts and objectives conceived by policymakers for the development of broadcasting services which will, ultimately, influence how national content is produced and distributed.

⁷² As already mentioned, Brazil is starting to use multiprogramming on their state-owned channels but not by the PSB TV Brasil.

CHAPTER VI

STEP 1: ANALYSIS OF THE SOCIO-CULTURAL OBJECTIVES PRESENT IN COMMUNICATION REGULATION

*And, you know, there is no such thing as society. There
are individual men and women, and there are families.
And no government can do anything except through
people, and people must look to themselves first.
Margaret Thatcher, 1987
(cited in Fraser & Simons, 2011: 348)*

6.1 Introduction

During the first part of this thesis, in the literature review, I highlighted how it is widely believed that governments, and, overall, societies benefit from broadcasting as a powerful communication source, capable of delivering education, knowledge and entertainment, bonding citizens and helping to create a sense of belonging and wellbeing. With those capabilities in mind, policymakers of each country steered the overall broadcasting services' aims and purposes accordingly. As discussed in Chapter 3, those objectives may be used as a means for achieving 'higher' socio-cultural goals, but they can also be helpful to accommodate industrial and commercial interests. Ideally, governments would like to see both sides being developed at the same time. The following comparative research will analyse which goals are predominantly stated in legislation and clarify which emphasis is given by policymakers. As this research is concerned with the impact of the current digital scenario on the production of national content, the analysis should clarify whether regulators are still fostering and nurturing socio-cultural objectives or simply using broadcasting

services as an economic activity which generates revenues, employment and cultural goods for consumption.

As discussed in Chapter 4, the investigation into the promotion of national content will be divided into three steps, which for the sake of clarity will be repeated here quickly. The first step will analyse how the selected socio-cultural objectives of broadcasting were defined in communication regulation, and how those concepts have developed in recent times. The second step will examine in detail the tools in the regulatory framework specifically concerned with promoting and fostering the production and distribution of national content, the 'push-pull' policies. The third step will perform a market analysis of the audiovisual industry (producers, broadcasters and distributors) and of viewers' preferences and habits with regards to television. This chapter is entirely devoted to the first step.

From the review conducted in Chapter 1, the five concepts identified - diversity, plurality, democracy, citizenry and cultural relevance – may be regarded, arguably, as essential descriptors of the socio-cultural aims of broadcasting. Therefore, the ways and intensities in which these concepts are transposed in legislation, and later enforced by regulators, ultimately affect the overall objectives of broadcasting services, channels' identities and, last but not least, the national content being produced.

During this introduction I would like to highlight the following points. First, 'universal access' will not be analysed as another socio-cultural objective in this thesis but as a legislative tool for the very subsistence of broadcasting and from which all the other goals will be constructed. Therefore, rules related to the access to traditional broadcasters will be included in Chapter 7 exclusively devoted to the regulatory tools. Secondly, although British and French legislation have specific clauses relating to their constituting nations and territories, the large amount of regulation at the country-level being analysed justifies the exclusion of the discussion of these specificities from this research. The kind of regulations that are beyond the scope of this thesis are, for instance, the British provisions for a Welsh channel run by an independent authority (S4C – Sianel Pedwar Cymru) or the French documents relating to the overseas territories and regional languages. Even

though these particularities could be approximated to the discussion of regionalisation and citizenry, those regulations will not be analysed.

Lastly, as discussed in Chapter 4, in order to understand the development that led to the current period of digital convergence, it is necessary to retrace the regulatory path back to the Acts that were in vogue when the liberalisation of broadcasting started back in the 1980s. Therefore, the research had to include the Acts shown in Figure 6.

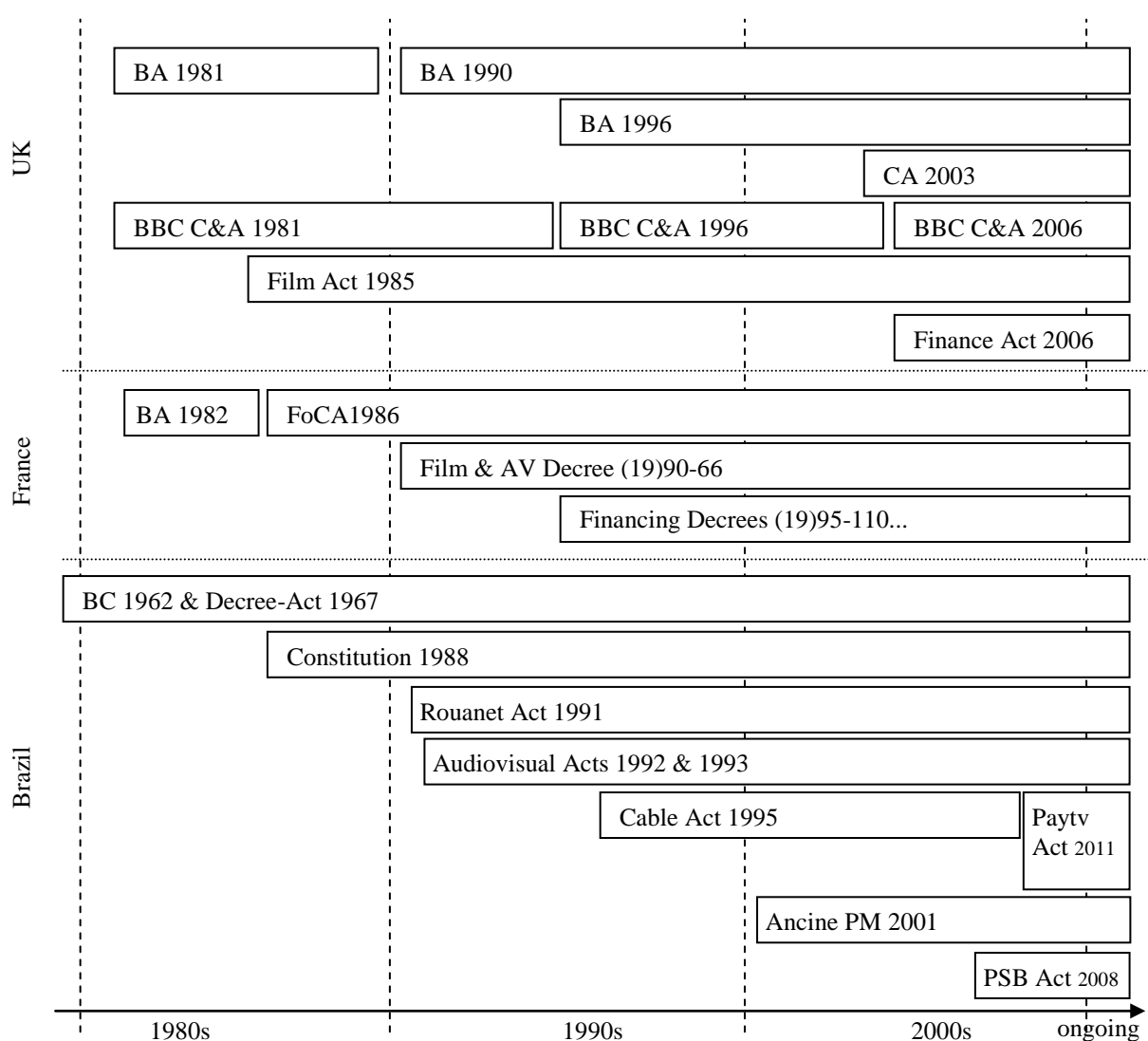


Figure 6 – Timeline of the regulatory acts under analysis

Notes: BA (Broadcasting Act); CA (Communications Act); BBC C&A (Charter & Agreement); FoCA (Freedom of Communications Act); Financing Decrees (95-110, 95-110, 99-130, 2001-609, 1332, 1333 & 2002-140; and BC (Broadcasting Code).

It is important to note that, as Figure 6 indicates, in the case of the UK parts of the BAs (Broadcasting Act) 1990 and 1996 are still valid, even after the enactment of the CA (Communications Act) 2003. They were not completely repealed by the new legislation, as with the other countries. The Freedom of Communication Act (FoCA) 1986, instead, is being constantly amended and consolidated and is therefore the one that governs broadcasting services in France.⁷³ In the Brazilian case the figure shows that the main broadcasting legislations, the Broadcasting Code (BC) 1962 and the Decree-Act (DA) 1967, have an ongoing validity throughout the period analysed, although for the FTA broadcasting service only.

Each of the five socio-cultural goals will be the objective of individual sections during this chapter. Before starting, I would like to remark that throughout the discussions of this chapter I will reference the findings to the actual clauses of the piece of legislation from which they were extracted. For further reference and checking, Annex 5 lists in a summarised form all the clauses of the regulatory instruments used in this step. For reminders of the definitions please see the box at the beginning of each section, as extracted from Chapter 4.

6.2 *Diversity*

Provision of a broad range of information, views, and of content (diverse programming) adding richness and variety to cultural and social life (McQuail & Siune, 1998: 42-3).

As discussed in Chapter 4, diversity and pluralism in academic literature are terms with varied and often overlapping definitions. In legislation unfortunately these terms are also sometimes used synonymously. For instance, the BA 1996 disposes that broadcasters shall provide “a range and diversity of independent productions” (s.19.2.b).⁷⁴ In fact, the introduction of a ‘diversity of independent productions’, an ownership policy for de-verticalising the industry, increases pluralism in broadcasting, not diversity. The French FoCA 1986, on the other hand, expresses that

⁷³ In the French case there are other independent pieces of legislation such as the Electronic Communication Act 2004 and the Digital Economy Act 2004 and the Telecommunication Public Service Obligations Act 2003. However, as those acts directly amend the FoCA 1986 when dealing with the broadcasting field, they will not be analysed separately.

⁷⁴ Note that British legislation is divided in sections (s) whereas French and Brazilian are divided into articles (Art.).

communication shall respect “a character pluralist of the expressions of currents of thought and of opinion” (Art.1). Notwithstanding these confusing usages, the essence of the ideas for diversity and plurality as used in Chapter 1 and 4 can be identified in legislation. As a reminder, diversity in this thesis will be related to a whole range of opinions (also called internal pluralism) (for details see Chapter 4 and Croteau & Hoynes, 2006: 20, 34-5; Kuhn, 1995: 38, 54) and to the diversity of media products and range of programmes. Plurality, on the other hand, will be related to plurality of ownership (also called external pluralism).

The legislative provisions with regards to diversity can be regarded as being constantly increasing in complexity in the British legislation. Initially, by means of the BA 1981, diversity was promoted by a general clause in which services should provide a “proper balance and wide range of programmes to appeal to a variety of tastes and interests” (s2.2.b). To increase diversity was also one of the purposes for the creation of Channel 4 by that act. The new state-owned broadcaster should deliver programmes “to appeal to tastes and interests not generally catered for by Channel 3” (s11.1.a). This general aspiration of increasing the diversity of the broadcast content was extended to include the other types of media by the successive Acts. The BA 1996, for instance, included that “diversity in the sources of information available to the public and in the opinions expressed on television or radio or in newspapers” was in the “public interest” (Schedule 2, s11 amending the BA 1990, Part IV of Schedule 2, s13.1.a.ii). This growing concern with diversity can be regarded as a counterbalance to the liberalisation process. As revealed in Chapter 5, the BA 1996 relaxed several ownership rules and there was the fear that liberalisation and the resulting decrease in plurality could hamper diversity.⁷⁵ In that sense, to include more provisions sustaining diversity could be regarded as a remedy for maintaining a healthy media system in times of loosened ownership control. Currently, with the enactment of the CA 2003, the duty of maintaining diversity is shared by all the main terrestrial broadcasters, consequently the BBC, Channels 3 (ITV), 4 (Channel 4) and 5 (Channel 5) are all labelled “public service broadcasters” (s264.12) and “relevant television services” (s.264.11). The Act dictates that, as a whole, those broadcasters have to “secure that programmes dealing with a wide range of subject-matters are made available for

⁷⁵ Concentration of ownership may lead to a concentration of sources of information reducing diversity and, overall, competition in broadcasting (see Chapter 1 for a more detailed discussion and Baker, 2007: 67, Puppis, D’Haenens and Saeys, 2007: 67).

viewing” (s264.4.a). Therefore, the duty of sustaining diversity can be seen in legislation as being transferred from the original PSB (the BBC) to the extended family of ‘PSBs’, the main terrestrial channels.

As discussed in Chapter 1, liberalisation and the increase in the number of channels are regarded by advocates of public service as diminishing the importance of PSBs. However, at the same time that the number of commercial channels considerably augmented and paytv systems started to offer hundreds of channels, diversity in FTA services was also fostered as a result of digitalisation. Close to the launch of DTV and *Freeview*, more public channels catering for different audiences were also granted by policymakers. Public channels that had been previously granted by the unusual instrument of “Letters” in 2001 (Jowell) and 2002 (Jowell)⁷⁶ – namely BBC 3 (for younger adults), BBC 4 (cultural), Cbeebies (young children), CBBC (pre-teen children), News and Parliament - were consolidated by the BBC Agreement 2006. Each of those services was designed to complement the range of the output of the public service delivered by the BBC (s11). Even considering that the opening of those channels may be regarded as a PSB strategy to crowd out competitors from the new ‘spaces’ created by digitalisation, the increase allowed the creation of niche channels. Increased diversity as a result of digitalisation was, therefore, not only available to paytv subscribers but also extended to the wider society.

Compared to Britain, in France diversity was a belated concern for legislators. The FoCA 1986 gave to the national regulator the mission of protecting the “plurality of opinions” (Art.1). However, as that same act also privatised TF1, the country’s most watched channel, concerns that cross-media concentration would jeopardise the diversity of views increased (Kuhn, 1995: 192-3). Therefore, policymakers included an obligation for public broadcasters to ensure the “plurality of information and of programmes” (Decree foresee in Art. 62). The word ‘diversity’ was only introduced in the FoCA in 1994 as one of the objectives of the audiovisual regulator (CSA), without a proper definition however (Art. 1). With that amendment, the overall purpose of guaranteeing freedom of expression and diversity of opinions was maintained (although using the confusing terms “pluralist expression of the currents of thought”). But the need for developing a “diversity of

⁷⁶ The legal documents granting permission to launch the new channels were letters from the Culture secretary to the chairman of the BBC expedited on 13th/September/2001 and 17th/September/2002.

programmes” was clearly inserted within a new concern for “developing the national industries” and “stimulating competition” (Art. 1). As in Britain, competition did not only mean more commercial channels. Diversity was also fostered by an increase in freely available public thematic channels like the Parliamentary Channel (FoCA amended in 1994, Art. 45-1) and Arte (FoCA amended in 2000, Art. 45). With digitalisation and the rearrangement of *France Televisions* in 2005, other public channels were also offered, such as Gulli (children), France 4 (entertainment and younger adults) and France 5 (knowledge).

In the Brazilian case, the analysis of the selected pieces of legislation did not show any prescription for or definition of diversity until the introduction of the Paytv Act (PA) 2011. This may be explained by two main reasons. First, by the already referred to lack of will or power to include content regulations for commercial broadcasters in a liberalised service (see Chapter 5). Secondly, by the low budgets spent on public broadcasting compared to the revenues of commercial broadcasters. It is easier and cheaper for governments and PSBs (than creating more channels and diversified content, at least in the short term) to include, instead, objectives relating to citizenry (as will be discussed later on). In fact the federal PSB only delivers one channel FTA.⁷⁷ These aspects partially explain why low audience figures are a well known characteristic of public broadcasting in Brazil and why there is usually only one public channel FTA per locality.

The PA 2011 explicitly introduced the diversity concept to Brazilian legislation. The Act, whose original purpose was just the opening of paytv services to foreign ownership (as will be discussed later on), includes amongst the objectives of those services the promotion of diversity of culture and information (Art. 3.ii). Moreover, the Act relates those objectives to Unesco’s Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Art. 3.1). By including an explicit reference to the promotion of diverse national cultures and anchoring that on an international convention, Brazilian legislators were careful to liberalise paytv but at the same time signal that to offer diverse national content is considered an important objective for those services and would be promoted as part of an international consensus. This rule also demonstrates another characteristic of the selected socio-cultural concepts, that they are highly intertwined. As will be

⁷⁷ Although, as discussed in Chapter 5, there are other publicly owned channels by other government institutions which are available on cable and satellite and in some cities as FTA.

discussed below, the Brazilian constitution of 1988 implicitly embraces the diversity concept while stating that national and regional culture shall be promoted by broadcasting services (Art. 221).

6.3 *Plurality*

Different sources of information (different ownership) and the existence of autonomous and independent media (McQuail & Siune, 1998: 42-43); concept related to 'ownership pluralism' (Kuhn, 1995: 50) or 'external pluralism of ownership' for the balance of opinions (Levy, 1999: 28).

As discussed in Chapter 1, plurality of ownership is also referred to as external pluralism. Also as noted in the previous section, sometimes the term diversity of sources is used in legislation to describe pluralism. In this thesis I will use pluralism in the sense of external pluralism. Although pluralism is a concept closely related to ownership, I will leave the discussion of the specific ownership and cross-ownership rules to Chapter 7, which is entirely devoted to the regulatory tools. Here I will concentrate on the main objectives of pluralism as addressed by legislation.

Pluralism was fostered in Britain in the early 1980s by enforcing the de-verticalisation of production. The BA 1981 stated that a "suitable proportion of programmes" should be supplied by other companies (s12.3.b). That proportion was set at 25% by the following BA 1990 (s16.2.h, s25.2.f and s186.1) and was maintained throughout the period under analysis. However, the obligation is reduced to 10% in the case of digital channels (BA 1996, s19.2).⁷⁸ In the case of Channel 4 the de-verticalisation has been complete since its creation (CA 2003, s295.1).

Another arrangement for the purpose of enhancing plurality which is unique to the UK (amongst the selected countries), is the appointment of an independent news provider for Channel 3 (ITV). In an attempt to dissociate the interests of commercial broadcasters from the views expressed by their own news programmes, the BA 1990 set a limit of individual ownership to 20% of the news provider and a cross-ownership limit of 50% with Channel 3 itself (s32). Later on, with the enactment of the CA 2003, that cross-ownership limit between the independent news provider and

⁷⁸ In the case of the BBC's digital channels the broadcaster agreed on maintaining the same level of quotas as will be seen in Chapter 7.

Channel 3 was scrapped. The initial objective of dissociating news provision from possible ‘in-house’ commercial interests was, thus, eventually abandoned. Furthermore, the consolidation process amongst the ITV companies (as described in Chapter 5) allowed by the CA 2003 raised concerns about possible homogenisation of news throughout the country and of consequently poor regional coverage (Harrison, 2006: 86).

The increase in concentration allowed by legislation was mitigated by policymakers by introducing more competition tools to broadcasting. In the CA 2003 the competition approach was further enhanced. Part 5 of the CA 2003, constituted of seventeen sections, named “Competition in communications markets” deals exclusively with the competition functions of Ofcom and how media mergers should be jointly dealt with by the regulatory agency and the Office of Fair Trading (s371.1).⁷⁹ Nevertheless, there is a clause in regulation that conditions the promotion of competition to a greater ‘public interest’ concept. Legislation mandates that, when analysing media mergers between newspapers and television channels, the public interest “need[s]” “accurate presentation of news”, “free expression of opinion”, “a sufficient plurality of views in newspapers” and “a sufficient plurality of persons with control of the media enterprises” (s375.1). With these provisions regulators related competition purposes to higher public interests considerations without, however, interfering *ex ante* with the market.

Plurality of ownership is, thus, pursued by “adopting a ‘light touch’ approach” (Parr et al., 2005: 481) and there are many critics of this line of action. Doyle and Vick (2005) anticipate that these mechanisms are unlikely to “play an important role in media ownership policy” as they were included as a political compromise “only to win passage of the Communications Bill in the House of Lords.” In the same vein, Rowbottom (2010: 190) highlights that, as those interventions are subjected to discretionary powers (a Minister of State initiates and terminates the process), they might be subjected to corporate lobby. Feintuck and Varney (2010: 159), describe a case where BSkyB bought ITV shares only to block an alternative bid from its rival Virgin Media. They also remark that, as lengthy processes, *ex post* regulation may simply serve corporate strategies.

⁷⁹ Even the BBC is subjected to monitoring from the competition authorities since the BA 1990. The Office of Fair Trading is officially responsible for analysing the relationship between the BBC and independent producers (s186.4).

In France competition regulation was also introduced in the broadcasting industries with liberalisation. The French regulator has a duty to promote competition in communication (FoCA 1994, Art. 1) and since the 2004 FoCA amendment, the regulator has to promote the development of audiovisual production (Art. 1) and regulate “free-competition” and “non-discriminatory relationship between broadcasters and distributors” (Art. 3-1). However, unlike in the UK, plurality in France is not fostered by a quota for independent productions but, instead, by economic contributions⁸⁰ from the different broadcasting activities towards the production industry both in film and television (Art. 71). This duty of stimulating competition, without setting an independent quota is coherent with an industrialist approach. Income is guaranteed to sustain the production of content but without a concern for guaranteeing their output on the screens. It is a plurality in production but not necessary beneficial to the viewer. This approach may also reflect the political power of film production agents in France when it comes to audiovisual policymaking. As will be discussed in the next chapter, the regulatory setup of diverting part of broadcasters’ revenues to the production industry may be too focused on cinema production. Some attribute that emphasis to a long tradition of supporting the film industry. Others, simply to the political influence of big national film production and distribution companies (Guerrieri et al., 2005: 35; Levy, 1999: 20-2).

Unlike the British case, changes in French regulation with regards to plurality were not profound. France did not change from the rigid *ex ante* approach towards a liberal ‘act if necessary’ *ex post* regulation. This may be due to the main concern of protecting language and culture. However, while comparing the French rule with the British setup, it has to be considered that the state monopoly of the media only ended in 1982, nearly thirty years after the BBC’s monopoly ended in the UK. Therefore, as noted by Kuhn (1995: 235), French media groups only started to diversify into broadcasting after that reform. French governments recognised that some degree of diversification and, as a consequence, of concentration was needed in order to create robust national media groups to compete with international conglomerates (Kuhn, 2000: 294). Therefore, increasingly more licences and bigger audience shares were allowed for single groups by the reforms carried out in the 1990s and 2000s, as will be discussed later on. In summary, as *ex ante*

⁸⁰ The contributions are a legal obligation (levy) calculated in terms of companies’ revenues, as will be discussed in Chapter 7.

limits were not dropped in French legislation, plurality and the fear of the internationalisation of the media remained a bigger regulatory concern in that country throughout the period analysed.

In Brazil plurality is approached mainly by dividing broadcasting into three different spheres. The Constitution of 1988 foresees broadcasting as an activity to be delivered by private, public and governmental broadcasters (Art. 223). This external pluralism rule is similar to the 'three thirds' rule used in France for guaranteeing internal pluralism (or diversity of opinions) in news coverage (La Porte et al., 2007).⁸¹ However, despite the constitutional guaranty of pluralism in Brazil, the 'space' occupied by each of those broadcasting agents is far from equitable. The disproportionate size (in terms of budgets, revenues and audiences) of Brazilian commercial broadcasters in comparison to the other two segments, public and governmental broadcasters, shows how unbalanced the service is. Moreover, media concentration was allowed in cable as well and is highly consolidated, like in other countries.⁸² As in the case of not allowing multiprogramming in order to favour established FTA broadcasters, regulators directly favoured the monopolistic nature of cable. Those facts shows how the "goals of pluralism and diversity are difficult to operationalise into effective laws" as remarked by Bardoel and D'Haenens (2008). However, when the PA 2011 replaced the Cable Act 1995, a general principle was included stating that those services should promote a "diversity of sources of production" (Art. 3.ii).

With regards to independent production, Brazilian legislation does not actively promote it in FTA broadcasting services. Although the development of independent production is one of the purposes of the broadcasting service (the Constitution dictates that broadcasters shall "stimulate independent productions" (Art. 221)), it was only in 2008 with the introduction of the PSB Act 2008 (and hence only valid for the public channel) that a quota of 5% for those works was introduced (Art. 8.ix). As there is no quota for, or direct financing from the commercial sector, production is

⁸¹ According to the academic, the 'three third rule' is used in France by the CSA to oversee if broadcasters divide news time equally between the government, parliamentary situation and opposition.

⁸² Intended to increase competition and plurality of ownership in paytv, the Cable Act 1995 foresaw that 30% of the capacity of the cable network should be leased to other companies which, in turn, could offer different services to customers (Art. 41). However, the regulation was never enforced. The intention of that regulation was to create a multi-purpose and shared network in order to develop competition in cable services and to create new services using a single network. Cable capacity was always used for increasing the channel line-up and when cable-telephony started, cable operators, naturally, did not want to share that new and promising source of revenue with tier operators.

mainly vertically controlled by broadcasters, resulting in a timid independent production sector, as the market analysis in Chapter 8 will show.

The PA 2011 also includes a quota for independently produced content. However, the quota is timid. Paytv channels (excluding news, teleshopping and other specific niche channels) shall broadcast independently produced content, at least, for one hour and 45 minutes per week (Art. 16).⁸³ Although the quota corresponds to less than 1% of the 'air-time', the inclusion represents a political breakthrough which may have consequences for FTA broadcasting in the medium term. In addition, in an attempt to introduce competition within traditional FTA broadcasters, the Act included a rule stipulating that all subscribers should receive at least two independent channels (Art. 17.4).⁸⁴ Certainly these quotas are small considering that paytv packages offer hundreds of channels. It seems that more needs to be done if Brazilian regulators want to alter the highly concentrated media scenario, as will become clearer as the chapter develops.

6.4 *Democracy*

Usage of the media as part of the public sphere and as a democratic tool for participation and for public debate; integrated with the political system and without censorship (Price, 1995: 23).

The usage of broadcasting as a tool for promoting and supporting democracy is strongly related to the support of the public sphere. Therefore this section will focus on rules such as news coverage and impartiality.

In Britain, news impartiality is a constant legislative concern. The BA 1981 dictates that news should be presented with "due accuracy and impartiality" (s4.1.b) and the BBC's Agreement of that year stated that the broadcaster must treat "controversial subjects with due impartiality" both in news services and with programmes dealing with "matters of public policy" (Annex). It is interesting to note that whilst at the time the Thatcher government indicated that the PSB should maintain a

⁸³ The instrument includes a national content quota of 3.5 hours per week, of which half should be independently produced.

⁸⁴ The channels shall be independent both from FTA broadcasters and from paytv distributors.

certain political detachment from the turmoil of controversial policies, such as privatisations and the closing of mines, the broadcaster's independence was mentioned neither by the Charter nor by the Agreement introduced in 1981. Independence was explicitly included in the next Agreement in 1996, however. The PSB would be "independent in all matters concerning the content" (s2.1) but would also need to "treat controversial subjects", such as "matters of public policy or of political or industrial controversy", "with due accuracy and impartiality" (s.5.1.c). Independence was explicitly granted but the broadcaster was then officially 'reminded' that political issues should be covered with special care.

It is important to note that before the 1996 BBC's new charter and agreement, perhaps already as a result of the politicisation of the country due to the aforementioned country's transformations, the BA 1990 introduced an obligation for the main commercial channels to broadcast party political programmes (s36). That political engagement of broadcasting was maintained by the transitional BA 1996 and was further detailed by the CA 2003 (s.333). The latter Act, which became law in a different and 'calm' political scenario, incorporated the guarantee of "an appropriate level of freedom of expression" (s3.4.g) and added, as a general rule, that the main terrestrials should "facilitate civil understanding by providing fair and well-informed debate on news and current affairs" (s264.6.c). These impartiality and democracy-related dispositions highlight how the British legislation in this respect has become more descriptive and prescriptive, while liberalising broadcasting and having to deal with more and diversified news providers.

In France, the act that ended the state-monopoly in broadcasting, the Audiovisual Communications Act 1982, perhaps reflecting a concern that a liberalised media could have an uncontrolled political bias, stated that in the public interest the public service should ensure "honesty, independence and pluralism" (Art.5.1). The act also included a paragraph granting right of response and the obligation to cover political campaigning (Arts. 6 and 33). A commission for guaranteeing the independence of the PSBs was also created (Art. 12). The succeeding FoCA 1986, which privatised TF1, included within the objectives of the regulator the duty to maintain pluralist expressions in political programmes (Art. 13). Additionally, in order to prevent the commercial channel from abandoning its social missions, an obligation to broadcast news and current affairs was also included (Art. 64.6).

These impartiality - and political - related prescriptions remained in the following FoCA amendments, although not only for TF1. Currently, main terrestrials should be independent, impartial and “favour the democratic debate” (FoCA as amended in 2004, Arts. 3-1 and 43-11). Arguably, one of the main outcomes of this disposition is the ‘three thirds’ rule (equal time to the presidency, majority and opposition) already mentioned. However, even that simple rule may be jeopardised. Following a complaint from the socialist opposition, the CSA modified the principle in 2009 in order to distinguish the President’s usage of the media as the head of the state from when he was speaking as the head of the party (Marin, 2009). Moreover, the regulator determined that the opposition should have at least half of the air time accumulated by the presidency and by the political majority (ibid). Despite the legislative effort granting balanced political space on television, the effectiveness of this must be questioned. Kuhn (2007) remarks that political debate programmes became less common on the main terrestrial channels and politicians are using alternative media, such as celebrity magazines, to reach the contingents of uninterested voters.

In Brazil, the broadcasting role of supporting democracy was defined by a leftist Presidency which enacted the still valid Broadcasting Code 1962. Very different from the tendency of the following decades of not intruding on the content delivered by commercial broadcasters of that country, the code included a quota of 5% for news programmes (Art 38.g) and, 90 days prior to each election, two hours daily of free-of-charge political campaigning (Art. 39). In spite of the military overthrow of that government in 1964, the political campaigning and the news quota were maintained in the reform introduced in 1967 by the *de-facto* government. Since then, the official start of each electoral campaign is marked by the ‘season’ of those political programmes which became so associated in voters’ minds with elections that these programmes, to this day, are an obligation which politicians heavily rely on.

Apart from assuring freedom of expression, an aspect not mentioned by British and French legislation is censorship, especially governmental censorship. However, in Brazil, the Constitution enacted in 1988, after the military returned the power to civilians in 1985, strongly stated, understandably, that censorship was forbidden in all social communication forms (Art. 220). Also partially understandable, out of the fear of being accused of using authoritarian tools, the new

government did not intrude and dictate new *dirigiste* rules for the usage of the media. The Constitution thus did not include further objectives for commercial broadcasters. Conversely, the Cable Act 1995, reflecting the bill's passage through the national congress, included civic purposes for the, then, new service. The Act stated that the service should promote political pluralism (Art. 3). More than a decade later, the PSB Act 2008 that created the federal PSB determined that the public broadcaster was independent from the government and mandated representatives from civil society to be included in its curator body (Art. 2.viii, ix and Art. 15). The Act also stated that the broadcaster should be used as a space for "debate and democracy consolidation" (Art. 3). A few years later, the PA 2011 included another democracy-related rule inspired by a Spanish regulation, as acknowledged by the Brazilian Deputy Bittar (2007: 21).⁸⁵ Each subscriber that subscribes to one news channels must have available, at least, another news channel for subscription. This pluralistic democratic move received much approval from organisations willing to diminish the dominance of Rede Globo's news channels and, certainly, from their direct competitor Rede Record, who have a similar news channel and would certainly welcome more distribution opportunities.

The inclusion of clauses supporting democracy may be regarded as a natural consequence of the relatively new Brazilian democracy. One indicator of the freshness of Brazilian democracy is that free political campaigning is not only mandatory in FTA, but voting is also obligatory. It is important to note however, that whilst obligatory voting has been a theme of constant debate in the congress (Lumier, 2009), free electoral campaigning on TV is firmly maintained in legislation. This preoccupation with the usage of FTA as an important deliverer of information is not restricted to democratic purposes only. As will be seen in the following section, the related citizenry objective is also highly valued by Brazilian regulation.

⁸⁵ Deputies are members of Brazilian parliamentary lower house, as in France and are the equivalent to the Members of Parliament in Britain.

6.5 *Citizenry*

Usage of the media for the promotion of ideas of belonging, identity and participation (Morley and Robins 1995: 74; Price 1995: 17) and of PSB for the Reithian ethos “to educate, entertain and inform” (cited in Wise & Steemers, 2000: 90).

The usage of broadcasting to foster citizenship values is closely linked to the, arguably, paternalistic educational objectives of PSBs, which can be traced back to the original Reithian triad ‘to educate, to inform and to entertain’ (cited in Wise & Steemers, 2000: 90). Additionally, part of PSBs remit is to represent all segments of society. Possibly one of the most important outcomes of promoting a broad citizenship, and therefore including the interests, beliefs and values of all segments of the society, is that broadcasters develop in audiences a sense of belonging and participation. However, to typify interests, tastes and values in legislation could be regarded as intrusive in democratic societies and seen as excessive control, on the verge of, if not, censoring broadcasting services. Therefore, the instruments that can be used are vague when defining what kind of content is regarded as positive for society and what should be banned. Only general concepts are included in a kind of loose or *ex post* control.

For instance, in the CA 2003 there is only a general rule for protecting the public from “offensive and harmful material” (s3.2.e) and, what some may regard as a consequence of times of media overexposure of celebrities, “against unfair treatment and infringements of privacy” (s3.2.f).

Perhaps in an attempt to restrict pornography, only the international channels are regarded as potentially dangerous to citizenry as they are still mandated to refrain from broadcasting content that “offends taste or decency” (s329) (a clause in place in the BA 1981), while national channels do not have this restriction.

What is more consensual than including specific positive-content clauses in legislation is the inclusion of the general objectives on the ‘public remit’ of PSBs. In Britain, the Reithian values of PSBs providing “information, education and entertainment” were included in the BA 1981 (s2.2.a). As with the other concepts already discussed, this one was also adapted through time and in the CA 2003 it includes explicit obligations for PSBs to deliver “science, religion, social issues, matters of international significance or interest and matters of specialist interest” (246.6.f). The BBC’s

Charter of 2006 expanded the public remit of the broadcaster including “sustaining citizenship” (s4.a). Religion is also included as a value related to citizenship. These programmes must be treated with “responsibility” (s319.2.e) and “not involve abusive treatment of religious views and beliefs” (s319.6.b). Thus, as legislation has become more explicit, and with it more prescriptive, it may be argued that media legislation is also receding towards paternalism.

Having catered for the representation of the regions in the regional licensing model of ITV and of minorities in the case of Channel 4, and with the increase in the number of channels, legislation addressed the issue of the production of regional content. The BA 1990 mandates the inclusion of “sufficient amount of time” for regional programmes and news of particular interests for local audiences (s16.2.c.i and ii). The CA 2003 reserves a specific purpose service aimed at local communities, the “local digital television services” who should contribute with economic and social benefits to their localities (s244.5). With a similar purpose the CA 2003 maintained Channel 4’s remit foreseeing that programmes shall take into consideration that Britain is a “culturally diverse society” (s265.3.b).

On the other side of the English Channel, French legislators foster citizenship values differently. In line with the ‘culturalist’ focus which might be expected from policymakers from the *La Manche* side, one of the purposes of the PSB as stated in the French Audiovisual Communication Act 1982 is the formation of “cultural, social, professional and philosophical communities” (Art. 5.4). The Reithian triad is also slightly modified in France: the FoCA 1986 determines that PSB should comply with educational, cultural and social missions (Art. 36). In addition, reflecting the catholic legacy, albeit of a secular country, the social remit includes the transmission of religious programmes on Sundays mornings (Art. 56). On the other hand, there is no paragraph restricting the broadcast of content which may offend ‘taste or decency’. On the contrary, one of the objectives of the broadcasting regulator since the initial version of the FoCA is to “guarantee to the citizenry access to free communication” (Art. 3). That is understandable for a country where, until the 1980s, the government was the only licensed broadcaster. Perhaps due to the emphasis on impartiality, there are not as many prescriptive rules of what should be or should not be broadcast in the French FoCA. However, there are some examples. Since an amendment made to the FoCA

in 2000, broadcasters must include anti-doping programmes in their schedules (Art. 20-3). Being less specific and more in tune with the multifaceted characteristic of current societies, and especially after the 2005 riots, the FoCA was also changed in 2006 to include, for the PSBs, the role of “promoting social cohesion” and “fighting against discrimination and delivering programmes reflecting the cultural diversity of French society” (Art. 43-11).

However, in times of satellite broadcasting, channels generated abroad may pose problems to the integration pursued by policymakers. In 2004 the Lebanese based, and allegedly linked to the *Hezbollah* political party, satellite channel *Al-manar* was forbidden to be distributed in France because of anti-Semitic programmes (see for instance AFP, 2006; Chrisafis, 2011).

In Brazil the relation between broadcasting and citizenship was modelled by the military’s reform of the Broadcasting Code 1962, introduced by the Decree-Act 1967. The amendments included a similar ban to the (democratic) British clauses regarding ‘taste and decency’ or ‘inciting crime’, although with stronger wording. The stipulations included typical concerns of dictatorships, such as banning content related to war, political or social subversion, indiscipline and against national defence (BC 1962, Art. 53). Important to note is that, as in the British case of ‘taste and decency’ and ‘inciting crime’, these ‘crime containment clauses’ are still not repealed. Additionally, the military government subordinated information, entertainment and advertising in broadcasting to higher educational and cultural goals (BC 1962, Art. 38.d). In fact, the reform introduced specific educational channels (DA 1967, Art. 13), in practice state-owned channels, without adverts, and instituted an educational quota of five hours per week of educational programmes for commercial broadcasters (DA 1967, Art. 16).

The democratic constitution of 1988, commonly called ‘the citizenship constitution’, softened the general aims of broadcasting by dictating that television shall comply with “preferences to educational, artistic, cultural and informational goals” and with “respect to ethical and social values of individuals and families” (Art. 222). The Cable Act 1995 went further into the content issue and stated that the service should promote universal and national culture, leisure, entertainment and social and economic development (Art. 3). The Act also introduced new governmental channels in

order to increase transparency and to actively promote social development. Those channels were further increased in number with the subsequent PA 2011. Currently there are ten citizenship-related channels that must be offered (besides the FTA channels) to every subscriber (PA 2011, Art. 32).⁸⁶ That number is often criticised in the press as being a burden for paytv distributors.

Between those two latest Acts, the PSB Act 2008 enacted a set of clauses for the promotion of “educational, artistic, cultural, scientific and informational goals” (Art. 2.iii) for the newly created TV Brasil.⁸⁷ In addition, the PSB shall contribute towards the development of critical conscience and the promotion of citizenry (Art. 3.ii and vii). However, according to the same regulation, these objectives should be pursued whilst also seeking to broaden PSB’s audiences (ibid). What is peculiar in the objectives of Brazilian PSB is that entertainment is explicitly left outside of the scope of broadcasters’ remit. Implicitly, however, entertainment is acknowledged as the broadcaster has to search for broader audiences.

As can be seen from the Brazilian provisions, on the one hand, citizenship values form a core part of PSB’s remit and, in general, of broadcasting services’ objectives (including cable). On the other hand, the promotion of the closely related objective of promoting diversity is not explicitly addressed by regulation. This may reside in the fact that to encourage diversity – implied in diversifying the types of programmes and channels - is more costly to broadcasters, as more channels and different kind of programmes have to be generated catering for different interests of specific segments of the society. Instead, it is easier and cheaper to promote citizenry values by producing a balanced news broadcast, debate programmes or traditional educational programmes following the easy recipe of using low-cost programmes, a common practice of state-owned channels in that country. Not surprisingly, the state-owned broadcasters are recurrently referred to be as hosts of “boring content”, even by their own chief executives (Carmona, 2006), and costly entertainment is left to the powerful and influential commercial broadcasters.

⁸⁶ Distributors have to include dedicated channels from the following organisations/orientation: educational, university, legislative, judiciary, community, citizenship and other federal government agencies.

⁸⁷ As a reminder, the broadcaster is the EBC (the company), TV Brasil is their channel.

6.6 *Cultural relevance*

Usage of mass media for the support of national values and authors (Oren and Petro 2004: 99). The support of the public interest by disseminating cultural goods, sharing a cultural heritage and “securing channels for reaching people with artistic cultural experience” (McQuail 1992: 284).

Closely related to the concept of citizenry and its aspect of building a sense of community and of belonging is the concept of the cultural relevance. However, to identify which content is relevant for a particular country or community in times of increased fragmentation of interests and of multifaceted societies may be as difficult as establishing what offends taste or decency. One particular category of content is identified as relevant, though, and these are the events of major public interest. As commercial and in particular paytv systems increased in popularity and importance, there has been a rising concern with those events, mainly sports, of being excluded from FTA as a result of exclusivity contracts with paytv platforms. It is important to note that these events cannot be simplified to sports only though. The royal ceremonies in Britain, the carnival in Rio or major political announcements in France are other events of national importance that would prompt a large public outcry (maybe to a lesser extent in the French example) if they were closed for subscription only. Despite the fact that that content may be highly culturally relevant for large parts of the population, as the coverage of these events are increasingly important economic assets, they will be closely examined in Chapter 7 when dealing with broadcasting rights. This section will focus instead on how regulation fosters national culture in general.

Perhaps the first characteristics of content which may be directly related to the concept of cultural relevance are the nationality and language. In the UK, the BBC’s 1981 Agreement considered that “proper proportions of matter” should be of “British origin” (Annex). The BA 1990 and 1996, reflecting the TWF Directive already in place, stated that a “proper proportion” of programmes should be of EU origin (because of the TWF/AVMS that proportion has to be, at least, the majority of the content) (BA 1996 s19.2.a, s16.2.g, s25.2.e, and s29). The CA 2003 furthermore includes a concern with regionalising production by mandating that a “suitable range and proportion of programmes” should be made outside the M25 (the motorway that delimits the London area) (s.264.6.j, s286.1, s286.3 and s288). This regionalisation rule can also be related to sustaining a ‘regional diversity’. Conversely, in the current legislation there is no obligation stating that a certain

amount of content should be British. Perhaps there is no such rule sustaining ‘national diversity’ because the main broadcasters already heavily rely on national content, as will be seen in Chapter 8.

If from one side currently in the UK there are no apparent concerns with the nationality of the content, the BA 1981 foresaw that for “programmes of merit” “wide showing” shall be secured (s2.2.c) and that British programmes shall be scheduled in “proper proportions” (s4.1.c). There was also a concern that the content should appeal “to the tastes and outlook of the persons served by the station” (s4.1.d). These concepts were adapted and, according to the BBC Agreement 1996, content should stimulate the performing arts and “reflect the lives and concerns” of both local and national audiences (s3.2.b and g). This latter scope was further enhanced by the CA 2003 which included, for the main broadcasters, the need to reflect the different communities, cultural interests and traditions within the UK (s264.6.i). It is inevitable to relate those dispositions to a broader purpose of sustaining diversity of programming. However, the prescriptions show how legislators ‘remind’ broadcasters how they have to be connected to local culture.

To define what is local or national is a difficult task though. The Finance Act 2006 that introduced a “cultural test” by amending the Films Act 1985, which will be discussed in the following chapter, determines that, for a film to be categorised as ‘made in the UK’, regulators have to evaluate if the content is based on a “British story” and uses a British language.⁸⁸ Those changes in British legislation show that the cultural relevance concept in British regulation is distancing itself away from rigid definitions of the nationality of the content and, instead, fostering a connection with local interests. Possibly, this is a reflection of the relatively multi-cultural nature of the country and the considerable proportion of the population with foreign background, especially in the bigger cities.

In the case of France, since the Audiovisual Act of 1982, the cultural relevance is strongly related to the promotion of the French language and culture, in France and worldwide (Art. 5). The act also states a special concern to represent the needs of its “composing population” (ibid). Those main objectives were maintained by all the versions of the following FoCA 1986 with a particular stress

⁸⁸ The test is detailed in the Statutory Order 643/2006.

on the “protection” of the language (the original Art. 3), later changed to “promotion” (amended Arts. 3-1, 20-1, 43-11). The “regional languages”, as part of the diversity of the linguistic patrimony, are also to be promoted (Art. 43-11). Additionally, the concern with the nationality of the content is more strongly incorporated into French regulation. As will be discussed in Chapter 7, when analysing the quotas, the FoCA 1986 explicitly included the obligation to broadcast French content (Art. 64-2 in the original act).

As will also be analysed in more depth in the following chapter, the nationality of the content in France is important not only for quota purposes but also for receiving public funds. In order to be entitled to receive public financing, the cultural relevance of the content is evaluated by a ‘cultural test’. Similar to the British case, the industrial and financial aspects of production are assessed. However, unlike in the UK, there are additional and specific grants given based solely on the content attributes and cultural relevance which are assessed by concepts not explicitly stated in legislation. Britain prescribes in legislation what should be produced and broadcast, instead of using economic contributions to be administered by the government later on. French government has thus more power to directly intervene in production and does not heavily rely on legislative prescriptions. A closer look at the content quotas (that will be performed during the second step of the research, in the next chapter) will reveal the real intensity by which cultural relevance is pursued in each country's broadcasting services.

In Brazil cultural relevance was ignored in broadcasting legislation, as would be expected in a country which is characterised by a lack of interference with the content delivered by commercial broadcasters. It was only when the Cable Act 1995 was enacted that an obligation to broadcast national independent productions was included (Art. 31.iv). The new PA 2011 enhanced those rules by mandating the inclusion of at least two channels with a majority of Brazilian and independently produced content. The Act also included a clause similar to the French philosophy, where paytv shall promote Brazilian culture and the Portuguese language.

If on the one hand the Brazilian communication authorities refrain from intervening in FTA broadcasting, on the other hand, cultural relevance is strongly promoted by the cultural policy

emanating from the governmental agents responsible for culture,⁸⁹ and also by a broad clause contained in the Constitution. The Brazilian *Magna Carta* states that social communication shall comply with the “promotion of national and regional culture” (as well as art and news) (Art. 221). The Rouanet Act 1991, that instituted a national cultural programme and fund, dictates the protection of the “cultural expressions of the groups that form Brazilian society and are responsible for the pluralism of national culture”, the preservation of “material and immaterial cultural and historical assets” and the stimulation of regional and local cultural and artistic productions (Art. 1). Similarly, when the film agency was created by the Provisional Measure 2228-1 (Ancine PM) of 2001, its remit included the promotion of national culture and language (Art. 2.i and ii).

At this point it is important to note that, contrary to the French case, in Brazil language and culture are promoted by the film agency which does not have the legal remit to regulate FTA. In France that promotion is the obligation of French cinema regulator (CNC) and includes broadcasting. Eventually, with the enactment of the PSB Act 2008, cultural relevance was also included as a concept for broadcasting but, obviously, only for the PSB. The newly created broadcaster shall cater for the promotion of national and regional culture (Art. 2.iv and v). It is also important to remark that despite the lack of obligations to promote national culture on television and the practically non-existent national content quotas, commercial broadcasters invest and heavily rely on Brazilian content (see Chapters 7 and 8). This comes as a result of its continued appeal to audiences. The most visible examples of this are the *telenovelas* and miniseries,⁹⁰ overwhelmingly based on Brazilian stories and literary works respectively (Brasil Junior, Gomes, & Oliveira, 2004; Conversani & Botoso, 2009). The practice does not necessarily imply the promotion of diverse cultural values or of society’s diverse representation though. It only shows that national content is scheduled in Brazilian broadcasting without the need of regulatory support.

⁸⁹ As examples of the different spheres of influence to which those organisms are subjected to, artist Gilberto Gil was Ministry of Culture whilst Helio Costa, who admitted of his own accord a connection to broadcasters (Cruz 2008: 92), was appointed as Minister of Communications.

⁹⁰ Telenovelas and miniseries have different lengths. The former is divided into 200 chapters (as the late 2000s average indicates), and the latter into 20 chapters (Conversani and Botoso 2009).

6.7 *Conclusions*

The objective of studying the audiovisual legislation of the selected case studies was to identify the different directions taken by policymakers in the implementation of socio-cultural objectives for broadcasting services.

The socio-cultural goals of diversity, plurality, democracy, citizenry and cultural relevance were chosen in order to identify whether or not those broader goals were being strengthened, or if they were changed for the accommodation of economic and industrial forces. As expected, the analysis did not deliver a clear answer. Both emphases are present in legislation. Even so, some conclusions may be drawn from the research.

Diversity, plurality and citizenry are issues on which both European countries spent considerable regulatory effort. Citizenry objectives have become more prescriptive for the broadcasting services in all three countries. The promotion of competition tools may be regarded as the chosen apparatuses for achieving not only competition *per se* but to fulfil bigger socio-cultural values, such as the delivery of content that addresses the objectives of diversity, democracy and citizenry. In the particular case of the UK, if the regulatory distance between the BBC and other commercial channels is diminishing, the analysis of the legislation suggests that the legislative prescriptions of the traditional broadcasters and the diversity of publicly-owned channels are being consistently increased through time.

In France a recent concern with issues of citizenship and political debate can be identified. These two issues are more prominent in the current Acts, as a result of the amendments of 2006, than, for instance, the objective of diversity. This void related to diversity may negatively impact the cultural relevance of the kinds of cultural products being produced too. Although there is a broad principle to schedule culturally relevant content in all three countries, the possible implications of that void on the production of national content will only become clearer as the next steps are performed in the following chapters.

Brazil, possibly because of the strong blocking power of commercial broadcasters, did not significantly alter the aims and objectives of broadcasting, which have remained unchanged since the military amendments of 1967. Cable, satellite and DTV were adopted with independent pieces of legislation, and even a new federal PSB was created, without altering the rules for commercial broadcasters. As a consequence, new socio-cultural goals for broadcasting services, arguably needed in any democratic and lively society, have been partially implemented. This situation is even more significant in a country where FTA broadcasting is the major deliverer of audiovisual content in terms of audience shares and, for vast proportions of the population, the only source of information. Moreover, in the Brazilian case a clear distinction was also seen between the objectives of subscription services, mainly for entertainment, and PSB, focused on education and information. As the former president of the extinct Radiobras (the former state-owned broadcaster that gave place to the EBC) very directly stated on broadcasting entertainment: “public TV does not do, should not say that do and, afterthought, should openly declare that does not do entertainment”⁹¹ (Bucci, 2006). The PSB’s Reithian triad does not apply for the Brazilian case.

These observations lead us to the following generalisation. British legislation may be regarded as having strong cultural and social goals pursued by economic tools. France has strong economic tools for the pursuit of not always clear cultural goals. The analysis also confirmed the assumptions that France has a more dirigiste approach, while the UK has a more liberal one. Brazil, on the contrary, has a light-touch regulation with the government leaving to the market the task of finding the optimal solution.

These tendencies could certainly be regarded as an oversimplification. However, that observation leads us to an obvious conclusion: this legislative assessment only accounts for half of the story. The evaluation of what kind of broadcasting services and as a consequence the types of national content produced and distributed could only be assessed by investigating what kinds of content are actually being broadcast. Perhaps these regulatory emphases on diversity in Britain and political debate in France are not achieved and, conversely, perhaps Brazilian broadcasting is generating culturally relevant content as a result of audiences’ tastes and desires.

⁹¹ “A TV Publica nao faz, nao deveria dizer que faz e, pensando bem, deveria declarar abertamente que nao faz entretenimento” (original quote).

Adding up to this legislative conceptual analysis, the next two steps, the regulatory tools and the market assessment (Chapters 7 and 8), will provide additional elements to assess whether regulation is being effective in sustaining broadcasting services and fostering national content.

CHAPTER VII

STEP 2: ANALYSIS OF THE REGULATORY TOOLS

*No government can order a great film to be made, or to
coerce audience from attending a movie that people
perceive to be good
(Motion Picture Association of America's former
president, Jack Valenti, 1993: 148)*

7.1 Introduction

Throughout the second part of this thesis, thus far, I have investigated the developments of broadcasting services from different angles. In Chapter 5, as a contextual chapter for the three case study countries, I discussed how changes in legislation have supported the developments of audiovisual services, notably through the opening of new television channels and distribution services. In Chapter 6, while performing the first step of the analysis, I indicated how the socio-cultural objectives of these services were addressed through time by policymakers. However, in order to truly achieve those socio-cultural goals, regulators have to translate those aspirations into effective, measurable and enforceable rules. For instance, in order to contribute to democracy and citizenry, the main terrestrials, as the most viewed channels, must be available for all members of society. Therefore, the rules of access and the coverage of those channels have to be properly addressed by regulation. Moreover, if there is a concern in sustaining national cultures and identities in times of global media and increase in imported channels, national content must be incentivised, funded and circulated. Therefore, regulators have to implement certain mechanisms enabling the production and distribution of national content. Those regulatory tools are usually referred to as 'push-pull' regulations and this chapter is entirely devoted to that analysis, the second step as defined in Chapter 4.

As this thesis is concerned with the promotion of national content, the regulatory ‘push’-tools (the ‘sticks’) that I will concentrate on are the rules concerning media ownership, rules of access to broadcasting channels, broadcasting rights and content quotas. On the ‘pull’ side of the regulations (the ‘carrots’) I will analyse the incentives and funding policies for the promotion of national content. Certainly there are other tools present in regulation that influence the production of content, such as competition rules, advertisement, licensing and taxation. However, for obvious practical reasons I will concentrate only on the tools mentioned, as they are more specifically related to the traditional channels which have a higher influence on the production of national content and a stronger legal remit to sustain the socio-cultural objectives of broadcasting services.

This chapter begins with sections 7.2 to 7.4 analysing three tools that are not directly applicable to the content itself but, instead, regulate the relationship between the different agents involved with its production and distribution and, therefore will be discussed more succinctly. In section 7.2 I will study the rules that govern the access to the main terrestrials, the biggest deliverers of national content, by the various distribution technologies. In section 7.3 I will analyse the developments in ownership regulations and, lastly, in section 7.4 I will examine how regulators are dictating the rules concerning broadcasting rights.

Before starting with the analysis of the tools directly linked to the production and distribution of national content, i.e. the funding and incentives and the quota, it is important to establish how national content is defined in regulation. Hence, section 7.5 will study the regulatory tools for the assessment of the nationality of the content. As a result of that analysis, in that section I will also indicate my own suggestion for the definition of national content. After understanding the complex array of production characteristics evaluated by regulators, in section 7.6 I will show the different types of financing schemes (the ‘pulling’ tools) that are available for national content producers in each of the countries of this comparative research.

Lastly, section 7.7 will focus on the regulatory push, the quotas. By creating a demand (or guaranteeing a distribution ‘space’) for national content, quota regulations dictate the amount of

specific kinds of content that must be delivered by the different broadcasters in order to fulfil the socio-cultural objectives analysed in Chapter 6. The quota set either in terms of minimum numbers of hours or in percentages, may refer to genres such as news, current affairs, films and children programmes, as well as national content and independent productions.

The analysis performed in this second step will complement the one performed in Chapter 6, the first step, and together they will provide further evidence of which of the socio-cultural objectives are more actively promoted by regulators. In addition, at least two other main outcomes of regulation will also be identified. First, the types of content fostered and secondly and finally, the differences in purpose for each of the regulated channels.

7.2 *Rules of access*

With the start of cable and satellite, clauses regulating the access to FTA broadcasting channels were introduced both for distributors and broadcasters. These access rules are important instruments in two ways. On the one hand they grant traditional broadcasters (prominent producers of national content) free-of-charge access to paytv platforms (and subscribers). On the other hand, the inclusion of those channels adds to the viewing options of subscribers and potentially increases the national content available. Thus, by sharing the same national programmes, the ‘bonding’ effect propitiated by the main terrestrials may be increased as the other segments of the society are also included. Therefore, the understanding of the rules of access - which helps to maintain diversity, plurality, citizenry and democracy - is necessary in times where national broadcasters and, overall, FTA channels might be lost in the digital ‘vast land’.

For those purposes, must-carry rules, the obligation to carry the traditional FTA broadcasters, are adopted in all our case studies.⁹² However, in the Brazilian case, if the conditions of the new PA 2011 are maintained, must-carry will be transformed to ‘must-offer’ after the analogue switch-off (Art. 32).⁹³ With that change, the new act may be regarded as reinforcing and strengthening well

⁹² Must-carry regulations are stated on the CA 2003, s64.3 (UK); FoCA 1986, Art. 34.1, 98-1 (France) and PA 2011 Art. 32 (Brazil).

⁹³ See Chapter 3.3 for ‘must-offer’ definition.

established and highly desired broadcasters, as those channels might obtain better financial deals from distributors. Nonetheless, the outcome of that strategy brings some degree of uncertainty because of the differences in market power between broadcasters and distributors in some cases.

As the digitalisation of FTA involves large amounts of capital expenditure in the upgrade, and satellite covers the country with virtually any ‘holes’ or ‘shadow areas’, there was a concern in the UK that digitalisation could lead to a ‘digital broadcasting’ divide and poor accessibility to the main terrestrials, especially the PSB. Hence, a concern with geographical coverage was included in the DTV roll-out in Britain (BA 1996, s76.4).⁹⁴ Not only was there a preoccupation with accessibility to the new digital channels by viewers, but there was also a related concern with guaranteeing that the main terrestrials would be distributed by those new systems (the mitigation of potential gatekeeping). Therefore, besides promoting better coverage, transmission ‘space’ was reserved in the multiplexers securing access to the traditional FTA channels (s28.2 and BBC Agreement 2006 s12.1).

The same care with coverage and availability for the main terrestrial channels was also identified in French legislation, and coverage clauses, too, were included. Since TF1’s privatisation, the new owners have been forbidden to diminish its coverage (FoCA 1986 Art. 62). With digitalisation, in 2007, an obligation for all main terrestrials to cover 95% of the population was included by a schedule to be monitored and reviewed by the CSA (FoCA 1986 Art. 96-2).

These access and coverage related issues brought by the new distribution systems and by digitalisation are not present in Brazilian FTA broadcasting legislation, as the service’s framework dates back to the 1960s, prior to the arrival of cable and satellite in that country. Even DTV was rolled-off without challenging commercial broadcasters (and not changing the Broadcasting Code (BC) 1962). The government opted for monoprogramming (Decree 5820/2006)⁹⁵ and broadcasters were able to compete with newer paytv systems, without having to face new broadcasters in the

⁹⁴ The BA 1996 split the broadcasting service between multiplexers (the transmission companies) and digital programme services (the content providers, i.e. the former analogue channels) (s1) and broader coverage was one of the factors to be considered in the bidding processes for awarding the multiplex licenses (s8.2).

⁹⁵ See Annex 2 for details on monoprogramming and multiprogramming.

new digital mode. As additional benefit to commercial broadcasters, no coverage obligations were imposed when granting the new digital licenses.

At this stage, I would like to comment on a few more points regarding access which are directly related to the arrival of the new distribution technologies. Just as important as assuring access for viewers and for distributors to the FTA channels is access to the listings of channels available on the decoders, the so-called Electronic Programme Guides (EPGs). Directly linked with must-carry obligations, a position on the EPGs is fundamental for achieving visibility to broadcasters. As currently paytv systems offer hundreds of channels to subscribers, a relegation to the bottom of the list could directly affect viewing shares. Additionally, there are concerns, as discussed in Chapter 1, that commercial systems prioritise commercial channels against PSBs. Therefore, in Britain, the CA 2003 included clauses regarding to the EPGs (s232). Legislators mandated Ofcom to foresee a “degree of prominence” for FTA channels in EPGs (s310.2). Similarly in France, EPGs have also been object of similar regulation, since an amendment was introduced in the FoCA in 2009 (Art.34-4) which ordered that national channels must be numbered and listed in the same hundred. In Brazil, the PA 2011 also dictates that must-carry channels must be listed in the same sequential order as given in the FTA service (Art.32.6). While in the European countries, the technical measure is linked to sustaining the social aims of broadcasting and securing prominence for the PSBs, in Brazil is certainly a matter of protecting national FTA commercial broadcasters from being diluted in a multichannel environment.

With regards to the internet, the new medium is addressed in legislation as an additional distribution platform at the service of broadcasting services (hence, convergence in complements as discussed in Chapter 3). However, in the case of the UK, the BBC Agreement 2006 (that granted the on-line service *BBCi* (later named *BBC iPlayer*)), conditioned the service to a higher cost-effectiveness goal (s12.1). In the British case the internet is seen as a service complementary to the core business which is broadcasting. However, as Chapter 8 will show, on-line viewing of television content is becoming increasingly popular, and broadcasters and legislators may have to reconsider that the internet is simply an auxiliary service.

Contrary to the UK, where internet viewing of the BBC programmes is not allowed outside of the country (probably to facilitate exports by BBC Worldwide), in France the internet is regarded as a contributor towards the promotion of French language and culture (FoCA 1986, as amended in 2009, Art.44.IV). As a consequence, the programmes are available on-line, worldwide, potentially contributing to the global spread of French audiovisual products.

In contrast to these explicit dispositions, Brazilian legislation does not address the internet except for the PSB Act 2008 that mandates the PSB to develop interactive content for the internet (Art. 3.ix). The later PA 2011 left on-demand and on-line activities completely de-regulated (Art. 19.vi). Perhaps that oblivion reflects the low importance of the internet as a deliverer of audiovisual content, a result of the low broadband penetration figures, as Chapter 8 will reveal.

After having analysed how policymakers regulate the access to the main terrestrials, helping to maintain broader concepts as diversity and pluralism, the following section will discuss how ownership tools have been used in legislation and how they affect the achievement of socio-cultural goals.

7.3 *Ownership rules*

Although digitalisation has the potential to reduce the costs of most of the audiovisual related activities, audiovisual industries, as discussed in Chapter 3, and more significantly the distribution sector, are dominated by big companies. In order to mitigate higher concentration and possible monopolistic practices by companies with significant market power, policymakers periodically readdress ownership rules in the different communication services. Although a comprehensive study of the ownership regulations is detailed in Annex 6, in this section I would like to summarise these complicated and extensive rules and relate them more closely to the debate on the production of national content.

Overall, a tendency towards a relaxation of the ownership rules can clearly be identified in all three countries but to a higher degree in the UK. Another general rule that emerged in the new

millennium, cross-ownership and mergers are a matter of competition authorities, and therefore subjected to *ex post* regulation, rather than directed by established rules in regulation. However, there still are explicit limits when newspapers are involved. In the UK, cross-ownership between that medium and television channels is limited to 20%, in the case of ITV (CA 2003, Schedule 14, s2.1), and there is a similar clause in French legislation for national broadcasting licenses (Art. 41-1 to 41-2-1). In Brazil there are no limits with regards to the press. Perhaps this is due to two facts. First, the Brazilian newspaper market is considered, arguably, a local phenomenon with few newspapers achieving significant sales outside their editing city. Secondly, in market terms, newspapers are a far less important medium than broadcasting.

Limits to mono-media ownership have also changed: from rigid numerical limits on the maximum number of licenses allowed for the same group, to limits on the overall audience share allowed for receiving new licenses. In the UK these limits were scrapped by the CA 2003 almost completely, and in France restrictions are applied when the national audience shares exceeds 8% (FoCA 1986, Art. 39). Brazil still controls the number of licenses per group regardless of the audience shares. By those dispositions it can be inferred that plurality of the media is more strongly pursued by the European countries.

On the other hand, Brazil is the only country in this case study that imposed a clear cross-ownership limit between telecommunication and broadcasting. The PA 2011 establishes that telecommunication companies cannot hold more than 30% of the shares of production companies or paytv channels and, vice-versa, those companies cannot hold more than 50% of the shares of a distributing company (Art. 5).

Although cross-ownership limits directly affect media plurality (and hence democracy), they do not necessarily imply a negative effect on the production of national content, unless the main broadcasters are global companies, which various scholars argue may favour imported content (see, for instance, Biltereyst, 2001: 89-90; Herman & McChesney, 2001: 52; Hopper, 2007: 62; McChesney, 2009: 189-90). That might have been the purpose of Brazilian cross-ownership

regulation. Whilst paytv was completely liberalised to foreign capitals, the production of content mainly remained under the control of nationals.

As foreign groups may favour international content, perhaps more directly related to the production of national content are the regulations with regards to the nationality of broadcasting ownership. These rules were also object of relaxation through time. In the EU media ownership rules are set by each Member State and, although there have been attempts to implement transnational regulation since the 1980s, consensus among nations was never reached (De Vinck & Pauwels, 2008: 291-2).⁹⁶

The CA 2003 dropped all restrictions to foreign ownership (s348.1). That relaxation is in line with an overall *ex post* approach to regulation. On the contrary, to take the opposite path and impose nationality clauses of ownership on broadcasters could cause a significant impact on the British broadcasting 'landscape', with the potential to trigger heated political debates and controversies. For instance, the Sky conglomerate, controlled by News Corp, would be the first obvious hit.

In France foreign ownership (excluding EU nationals) is limited to 20% of the shares of the broadcasting channels (Art. 40), and to 5% in the case of TF1 (Art. 61).⁹⁷ Since the privatisation of that channel, there is a specific set of ownership rules where a single company can only hold up to 50% of its shares (Art. 58).⁹⁸ These rules have remained unchanged in the period under study. As a result, as seen in Chapter 5, the main broadcasters, distributors and content producers are mainly of French origin, with Vivendi the biggest player holding interests in all segments.

In Brazil, broadcasting has always been conceived as a national business reserved for locals (Grant & Wood, 2005: 237). Foreign ownership of broadcasting companies has been prohibited in Brazil since the start of the service (Lash & Lury, 2007: 160). Restrictions to foreign ownership

⁹⁶ Important to note at this point is that, because of the lack of economy of scale, small countries often adopt the most liberal policy with regards to foreign ownership, such as the Netherlands where there is no restriction in place (Campbell 2008: 53).

⁹⁷ Art. 40 exempts previous treaties, therefore EU nationals are exempted from that limitation (In the original: "Sous réserve des engagements internationaux souscrits par la France").

⁹⁸ The shares of TF1 were divided into three blocks for privatisation: 50% to be acquired by one group; 40% as a public offer and 10% to the employees.

were kept for FTA broadcasting channels and newspapers, although slightly liberalised by the 1998 Constitution up to the limit of 30% (Art. 222).⁹⁹ However, since the enactment of the PA 2011, there are no more foreign ownership limits in any paytv distribution service. The Act only prescribes that those services should operate without monopolies or oligopolies (Art. 3.vi). That principle is obviously easier to state than to actually implement and enforce. As a result of the regulatory framework, cable is consolidated nationwide by Net Servicos, partially owned by Mexican Telmex, and satellite is dominated by DirecTV (using the Sky brand). The Act, nevertheless, did include a foreign ownership limit for quota purposes, valid only for paytv.

In order to be considered as a Brazilian channel (and therefore count for the purposes of the paytv quota); at least 70% of the shares of the paytv channel have to be held by Brazilian nationals (Art. 2.xviii). The approval of these rules may represent a regulatory obstacle to Vivendi, as it invested in Brazil by acquiring the *entrant* to telephony GVT,¹⁰⁰ as mentioned in Chapter 2, while also being a content producer (albeit not reportedly in Brazil). If from one side the new regulation could block Vivendi's potential interests in producing content in Brazil (while being also a telecommunication provider), the approval of the new rules are beneficial for Rede Globo. According to what has been widely reported in newspapers (see for example Rosa, 2010), with the abolition of limits to foreign ownership in cable, the company was able to transfer their remaining shares in the cable operator Net Servicos to Telmex and concentrate on FTA broadcasting and content production, Globo's *forte*.

As a result of the ownership framework of our case studies, the French mediaspace has a preponderance of national media groups and in Britain there is a more noticeable *co-habitation* between national companies and international groups. In Brazil national ownership is zealously maintained for the FTA service, while consolidation and foreign presence is the characteristic of paytv services.

⁹⁹ Moreover, in FTA broadcasting managerial and editorial positions of “journalistic companies” have to be held by Brazilian nationals (Decree-Act 236, Art. 38 and Federal Constitution 1988 Art. 222).

¹⁰⁰ Entrant in telephony are those companies that compete with incumbent operators either using the same network or building one of their one, as is the case of GVT and others in Brazil.

If from one point of view the relaxation of ownership rules is partially responsible (or a consequence, depending of the perspective adopted) for digital convergence and for increasing the power of global media corporations, from another point of view this re-regulation (or de-regulation) brings telecommunication companies closer to the broadcasting sphere. At this moment I would like to remark that, as mentioned in Chapter 2, the approximation was not triggered by changes in broadcasting regulation. Telecommunication technologies were enhanced and currently several services have audiovisual capabilities and distribute broadcasting content. Hence the push from the industry to change regulations. As a result of those processes of approximation with (the capital intensive and transnational) telecommunications companies, and the liberalisation of broadcasting and of ownership, the distribution of national content may be negatively affected (as pointed out by scholars and that will be analysed in the market assessment of Chapter 8) and media plurality, in practical terms, diminished.

After having analysed how the plurality and the nationality of the media, which might impact on the production and distribution of national content, are regulated, the third set of tools to be analysed are those concerned with broadcasting rights.

7.4 *Broadcasting rights*

The acquisition of appealing content became 'key' to attract the attention of subscribers and their willingness to pay for broadcasting services. As discussed in previous chapters, securing exclusivity deals for broadcasting football championships was behind the successes of BSkyB in the UK, Canal Plus in France and Organizacoes Globo in Brazil. For some, sporting rights are the 'king of content' and as Haynes (2005: 6) highlights:

Sports, more than any other form of media content, has been used as a weapon to break into new markets, undermine competitors and ultimately dominate certain sectors of the media industry.

Actually, the regulation of the practices surrounding the acquisition of broadcasting rights has become vital for regulating broadcasting and audiovisual industries in recent times. The CE official Ungerer (cited in Feintuck & Varney, 2010: 92) declared that the securing of "intellectual property rights [for sporting events] are the name of the game." Albeit the discussion of the regulation of

distribution rights might be included within a greater debate over intellectual property law, for practical reasons I will limit the discussion to the implications on broadcasting services only.¹⁰¹

When regulatory bodies, especially in the EU (with an amendment in 1997 in the TWF Directive), started to limit the exclusivity deals in broadcasting, regulations were explicitly based on socio-cultural grounds. Some events were declared as being of cultural relevance and of major interest to society. However, due to the rise in the value of those deals, the prescriptions increased in complexity in a struggle to secure both broad viewing (by FTA channels) and economic value (to paytv channels and platforms). As examples, according to the *Daily Mail online* (Todd, 2011), football rights of the Premier League were sold to BSkyB in Britain for £302m for a period of five years in 1992, and the last contract, for the period 2011-2013, was sold for £1,782m.¹⁰² Putting that value into perspective, this value would represent more than 20% of the yearly budget of the BBC (TV license revenues of £2.7 billion according to Ofcom (2010c: 134)). In France, the situation follows a similar increasing pattern. According to *Maxifoot* (Letennier, 2011), football rights for *Ligue 1* rose from €0.8m in 1985 (for one year) to €668m in 2012, always with Canal Plus having the biggest share. Perhaps surprisingly for Canal Plus, for the period 2012 to 2016, Vivendi's company will face the competition of Al Jazeera, based in Qatar, who paid €60m per year for showing six games per week (RTL Sport, 2012). Drawing from another example of a major event, the Olympics, competition also arrived in Brazil leading to an increase in prices too. As broadly reported by the press (see for instance Araujo, 2007), the Brazilian broadcasting rights for the games held in Beijing in 2008 were bought by Rede Globo for US\$ 12m (approximately £8m), whilst the following games, in London where bought by the competitor Rede Record (the network owned by a Pentecostal group as mentioned in Chapter 5) for US\$ 60m (almost £38m).

These substantial figures justify why regulators were forced to abandon socio-cultural arguments and instead used different degrees of economic interventions. However, inevitably, those kinds of involvements often attract criticism. As the scholar and media specialist Keller (2009: 434) states:

¹⁰¹ A discussion on intellectual property law has several implications such as copyright issues (challenged by digital technologies), and social and political demands such as the cultural exemption debate (as discussed in Chapter 3) (for more details see Morris and Meadows 2003; Lessig 2004; Haynes 2005; Voon 2007).

¹⁰² According to the news article, the rights were bought by ESPN and SKY whilst the share of the latter was over £1.6 billion.

These measures [on sport rights] were a direct interference with commercial transactions involving highly valuable content rights and were, in effect, a barely disguised subsidy for the public service media who tended to be the major beneficiaries.

Currently, the CA 2003 divided those events into two groups: “A” (for more important events, as the Olympics), and; “B” (such as cricket test matches) (s299).¹⁰³ For “Group A” the principle was the same as before, i.e. not permitted exclusivity deals to paytv if not offered on fair and reasonable terms to traditional broadcasters (DCMS, 2001; Ofcom, 2012b). However, for “Group B” a lighter control was introduced. Exclusivity could be granted if the other segment (FTA or alternatively paytv) could cover the same event by highlights or delayed coverage (s300). The events are listed by a specific code made by Ofcom (s301) (Ofcom, 2008a).¹⁰⁴

Unlike in the British case, in France the events are *ex ante* listed in the Decree 2004-1392 (Art. 3).

¹⁰⁵ This different solution to the issue is in line with overall regulatory tendencies. France adopted a more rigid regulation for a wider variety of sports and Britain allowed exclusivity deals for what they considered as ‘not-so-important’ content without the need for the prior approval of regulators.

Nevertheless exclusivity for listed events in France is not allowed if not offered to FTA channels in “equal, reasonable and non-discriminatory terms and conditions” (Decree 2004-1392, Art. 5), because of the high figures involved, regulation did not prevent national football championship to be screened almost exclusively by paytv channels.

¹⁰³ Group A: The Olympic Games, The FIFA World Cup Finals Tournament, The FA Cup Final, The Scottish FA Cup Final (in Scotland), The Grand National, The Derby, The Wimbledon Tennis Finals, The European Football Championship Finals Tournament, The Rugby League Challenge Cup Final, The Rugby World Cup Final.

Group B: Cricket Test Matches played in England, Non-Finals played in the Wimbledon Tournament, All Other Matches in the Rugby World Cup Finals Tournament, Six Nations Rugby Tournament Matches Involving Home Countries, The Commonwealth Games, The World Athletics Championship, The Cricket World Cup - the Final, Semi-finals and Matches Involving Home Nations’ Teams, The Ryder Cup, The Open Golf Championship.

¹⁰⁴ Code on Sports and Other Listed and Designated Events.

¹⁰⁵ The French listed events are: Summer and Winter Olympic Games, French national football team, Opening, Semi-finals and Final of the Football World Cup, UEFA Final if a French team had participated, Champions league Final, French Football Cup Final, Six Nations, Semi-finals and Finals of the Rugby World Cup, Final of French Rugby championship, Final of the Europe Cup of rugby if a French team had participated, Finals single Roland Garros, Semi-finals and Finals of Davis Cup and Fed Cup if French team had participated, French F1 Grand-prix, Tour de France, “Paris-Roubaix”(cycle), Finals of Europe’s and World’s Basketball and Handball Championships and the Athletics World Championships.

The Brazilian approach to listed events is neither *ex ante* nor *ex post*. It is, not surprisingly, *laissez-faire*. As a result, Organizacoes Globo and their affiliates, Rede Globo (FTA) and Sportv (paytv channel) have the exclusive rights to the majority of the main events, a situation which (in football), according to the sports newspaper *Gazeta Esportiva* (2011), dates back to 1997. This state of affairs led to those paytv operators not affiliated to Net Servicos, formerly a Globo owned company, bringing the case to the attention of the competition authorities. As a result of several processes, CADE, the competition agency, decided that football clubs should not give preference to Rede Globo during the bidding process (ibid). In spite of that ruling, Rede Globo still holds the rights to the Brazilian championship, at least until 2014. However, as already mentioned, the acquisition by Rede Record of the broadcasting rights to the Olympics Games in London, in 2012, for the Brazilian market, could be interpreted as a sign of Globo loosening the incontestable dominant position. The liberalisation of paytv for foreign ownership could also bring in new competitors, challenging the purchasing power of Rede Globo. Although, in a very clever move in the Lower House, the broadcaster directly benefited from the insertion of a clause in the proceedings of the PA 2011. The rule forbids telecommunication companies to acquire broadcasting rights to “events of national interest” (Art. 6).

While the issue of sports-related content - which because of the financial and audience implications has a great impact on the capacity for the production of national content - confronts FTA broadcasters with paytv operators, regulators also introduced new rules separating the commercial interests of broadcasters from those of independent producers. As discussed in Chapter 3, in order to increase diversity and to develop national audiovisual industries, regulators introduced independent content quotas. However, the introduction of a quota without actually regulating the economic relationship between producers and buyers led to a situation where the latter could freely exercise their significant market power over the production companies. As a result, the expected economic benefits of the quota were not spread evenly throughout the audiovisual industries.

Possibly because in Britain the independent quota is higher (than the one imposed by the EU) and, hence resulted in a greater independent sector, new rules were introduced as a result of lobbying

by independent producers (Chalaby, 2010).¹⁰⁶ The CA 2003 regulates the commercial relations between broadcasters and independent producers, in what is considered a major breakthrough for developing the independent production sector in the UK (Chalaby, 2010; Haynes, 2005: 89-90). According to the new clauses, programme commissioning shall follow a code, approved by the regulator, which has to state the different categories of rights purchased and the duration and exclusivity clauses contained in each contract (s285). As mentioned in Chapter 3, this disaggregation of rights, where each distribution market is specifically negotiated, enabled independent producers not only to retain and to negotiate secondary rights with other companies but also to export their content, which Chalaby (2010) argues is one of the reasons for the success of the exports of British formats.

On the same issue, French regulation, since an amendment of the FoCA introduced in 2001 and regulated by the Decrees 2001-609, 1332, 1333 and 2002-140, also mandates that the relationships between independent producers and broadcasters shall be accountable. According to these rules, a production company can be considered independent if commercialisation deals comply with several conditions, which include: broadcasters cannot hold broadcasting rights of the purchased content for longer than 18 months; no secondary rights (for other segments such as cinema or other channels) can be purchased by the broadcaster; and not more than 80% of the output of the producer can be purchased by the same broadcaster (FoCA Art. 71, Decree 2001-1332, Arts. 6 and 11 and similar clauses in the other before mentioned Decrees). These clauses have the purpose of limiting the economic power of broadcasters. By limiting the duration of the exhibition window and by forbidding the purchaser to retain commercialisation rights for other markets, clear boundaries have been set as to what the broadcaster is paying for. It also enables the producer to further commercialise their output with other companies. On the downside, the 80% rule allows a disproportionate dependency on one single client which might be reasonable for small companies that produce few programmes but not for those with a broader production. For those different situations an *ex post* solution would be more adequate.

¹⁰⁶ According to the author, the PACT (Producers' Alliance for Cinema and Television) association, that gathers independent producers in Britain, championed these aspirations.

Although these *ex ante* French rules impose a specific degree of disaggregation and independence in the production sector, as opposed to the non-prescriptive and loose *ex post* British legislative approach, the French independent production industry is smaller than its British counterparts (see Chapters 1 and 8 for further discussion on cultural discount factors and exports performances and Chalaby, 2010; Grant & Wood, 2005).

In Brazil, no clauses can be found in legislation dealing with the commercial deals between broadcasters and independent producers. As a result, national content is mainly produced by the formers. The new paytv act may change this situation. As will be discussed later on, the PA 2011 includes quotas for national and independent content and channels. However, the instrument does not deal with the disaggregation of rights, nor does it determine a maximum output that broadcasters can acquire from single producers as in the French case. Although the act also creates a 'pull' mechanism financing independent industries, as will be seen later on, the weakness of the quotas suggests that the independent industry will struggle to flourish in the near future.

The solution for dealing with broadcasting rights has also shown varied approaches among the countries under study. Britain, while relegating some events as being of a 'minor importance', could be interpreted as having accommodated the interests of paytv operators allowing more events to be covered with exclusivity. Thus favouring a more economic (or industrialist) approach and disregarding the socio-cultural implications of concentration of revenues with other groups than national terrestrials, with consequences as to the capability of generating national content. French policymakers, on the other hand, included a broader range of sports, none of which can be denied access to FTA broadcasters. Brazil, our last case study, has to break commercial monopolies with the aid only of national judicial and competition authorities. Brazilian regulators do not count on the legal support from supranational directives as the European countries do. As a result, although parts of major events are still freely available on FTA, they probably only still are because it remains more profitable to have them on FTA than on relatively low uptake services, as is the case of paytv in that country. There are signs, however, of increased competition for these events in France and in Brazil.

Now leaving behind the tools that govern the relations between the different activities of the audiovisual industries, the following sections will be more focused on the rules directly related to content. The next section will analyse how the nationality of the content is assessed.

7.5 Defining the nationality of content

Because of the various activities involved in the production of a film, important ingredients of broadcasting schedules, to assess its 'nationality' is somehow complicated. For instance, long before digital convergence, *Bridge on the River Kwai* (Columbia, 1957) was filmed in Sri Lanka, with a British director, American financing and script, but based on a French novel (Grant & Wood, 2005: 139-40). Currently that mosaic can be even more scattered, with digital work being carried out virtually anywhere. Television programmes, moreover, pose other challenging questions when it comes to the cases of formats. Endemol (NL), the original licensor of the reality show *Big Brother*, formed an equitable joint-venture with Rede Globo, Endemol Globo, to produce their global products in Brazil (Endemol, 2009). Because of that arrangement, is the resulting *Big Brother Brasil* as 'Brazilian' or as culturally relevant as a Brazilian story as retraced by a *telenovela*? Should these hybrid productions count as national content and therefore suitable for fulfilling quota requirements? And should that content be produced with the aid of public grants, financed by national taxpayers or by the TV license? The difficulty of assessing whether the content is national and hence should receive financial benefits is not an easy task, and countries' solutions to the question vary substantially. Overall, as funding mechanisms and incentives are increasingly important for the production activity, the identification of the nationality migrated from a cultural consideration to a comprehensive economic assessment of the produced work. However, because these evaluations are vastly detailed, I will not describe them in this section (see Annex 7 for details on those regulations). Here I will concentrate on the major implications of the adopted policies. Before starting that analysis it is important to clarify the regulations at the European level.

Television programmes produced in European countries follow a European framework, in which programmes from any country which is a signatory of the 1989 European Convention on Transfrontier Television or other nations which have co-production agreements with the EU are

considered as 'nationals' (Grant & Wood, 2005: 162). In addition to that convention, as Harris (2004: 21-2) reminds us, since 1994, there is the Council of Europe's Convention on Cinematographic Co-production. The convention grants national status to co-produced films as long as national companies contribute at least 20% of the production costs (ibid). As of 2011, the instrument has been ratified by more than forty countries including France and the UK (Council of Europe, 2011). As Harris (ibid) continues, the convention stipulates a 'cultural test', where points are awarded if the person in each of the evaluated categories is an EU national. As will be seen in the following sub-sections, the test is similar to those used in France (albeit slightly modified in the case of television programmes) and in the UK. The categories are: director (3 points); scriptwriter (3), composer (1), first role (3), second role (2), third role (1), director of photography (1), sound recorder (1), editor (1), art-director (1), shooting location (1), post-production (1). To pass the 'EU nationality' test the film has to achieve 15 out of 19 maximum points.

Two other points need clarification prior to the case study analysis. First, at the national level, the assessment, both of films and of television programmes, is normally defined by the same rules. Brazil is an exception. As that country does not have national content quotas for commercial broadcasters, there are no rules defining what is national for the purposes of FTA services. Secondly, in order to simplify the description of the rules, when referring to national productions I am also referring to those co-productions made with countries which have signed co-production agreements. After these initial remarks, I will now discuss how regulators have changed the assessment tools used in each of the three case studies.

Before the introduction of the 'cultural test' in Britain in 2006, and up until 1999, the existing rules were concerned with expenditure in the country (at least 70% of the production costs) and filming locations (no more than 20% filmed outside the UK). The latter condition, it could be argued, marginally touches on a cultural concern. In 1999, that location limit was scrapped. The Minister for Tourism, Film and Broadcasting Janet Anderson argued that the main purpose of the, then, new rules was to create a "film industry that contributes fully to the national economy as well as to our national culture" (*Draft films (Modification of the definition of 'British Film') Order 1999*, 1999). In practice that approach meant that as long as the minimum production costs were spent within the

UK, the content could be shot anywhere, no matter the leading actor, the director or even what the story was about. Or, as Anderson also declared, “ensuring that we retain the lion's share of the economic benefits” (*Draft films (Modification of the definition of 'British Film') Order 1999*^{ibid}) the film would be considered British.

The adoption of the ‘cultural test’ (with alterations introduced in the same year, in 2006) increased the importance of cultural aspects (a ‘British story’) which could benefit local and authorial productions.¹⁰⁷ However, the complexities of the whole film policy framework (which include tax rebates and credits), make it difficult to be equally understood and used by small and big producers. As a financial and business advisor firm concludes:

Overall it appears to us that the new provisions, as set out in FA06 [the Financial Act 2006], should ultimately benefit the UK film industry focused on producing commercially successful films. It should also be of benefit to the post production houses and studios that work on larger, US in-bound productions (Thornton, 2011).

Agreeing with the business advisor, as the act only considers two categories of films, naming those with less than £ 20m as “limited-budget films” (Finance Act 2006, s34.2), the British system seems too focused on big projects.¹⁰⁸ But many film producers might find that limit far from being a limited budget. The ceiling seems too high for small projects which, it could be argued (as will be seen in the Brazilian discussion), are usually more related culturally to the local scene. More expensive films, on the other hand, possibly with global themes, and related to bigger and mostly international producers, could find other ways of financing than by supportive regulation.¹⁰⁹ The introduction of such a high ceiling for receiving the maximum benefits foreseen in the legislation could be interpreted as simply offering a competitive environment for attracting big and ‘runaway’

¹⁰⁷ The test is foreseen in the Finance Act 2006 which modifies the Films Act 1985 and is regulated by the Statutory Instrument 2006/643.

¹⁰⁸ Regulators focus on big budgets is perhaps a consequence of British producers trying to break into the American market and of the high influx of American productions which are produced in the UK due to the tax incentives, as will be seen in Chapter 8.

¹⁰⁹ For instance, according to the IMDB database, the Hollywood backed (and an ‘inward production’ in the UK) *War Horse* (Dreamworks, 2011) was reported to cost more than £40m while *Route Irish* (Sixteen Films, 2010), a UK film financed by Film 4 and France 2, had a budget of just £3m as reported by an on-line reviewer (Punch, 2011).

productions to be produced in the country.¹¹⁰ As seen in Chapter 2, that is a practice the UK historically promotes.

On the French side, the current system for classifying content as ‘French’ originates in the Freedom of Communication Act (FoCA) 1986, as amended in 1989, which mandated that the majority of films and audiovisual works should be of “French original expression” (*“d’expression originale française”*, Art. 64.2) and should originate in the EU (Art. 70.2). However, the Act did not actually determine what that ‘French expression’ should be. In the following year, the Decree 90-66 filled that void and determined that works made entirely in the French language, and with script and dialogues written in French, would be considered as being of French original expression. France adopts cultural tests since the Ordinance of Ministry of Culture and of Communication of 21/May/1992. Some may relate the adoption of these tests to the political debate of those years, as noted by Vembulu (2003: 192), where Europe was seen ‘threatened’ by Americanisation and as being in a profound cultural identity crisis.

Important to note in the French approach is that, according to the Decree 90-66, in order to be considered as a national film, the only requisite is to be filmed in French (with original script also written in French). However, for a work to be considered European the ‘cultural test’ is applied. It means that a film produced by a foreign company with foreign actors but from a French script and with dialogues in French can be ‘stamped’ as French but not as a European work. One possible conclusion that can be drawn from this rule is that France is more focused on supporting the language and national culture, whereas if the project is from the EU then the economic benefits of being filmed in the country will then be assessed. The only cultural relevance clauses in favour of the French rules are that the film must be filmed in French, whereas in the British case the language is not important at all. These rules indicate that those countries are not highly concerned about foreign projects – with potential foreign cultural relevance – being classified as national. However, at the same time, those legislators impose much stricter rules for content made

¹¹⁰ Runaway (in their country of origin) or, alternatively, inward production (in the country that receives the production). The BFI (2011: 145) defines it thus: “an inward feature is defined as a feature film which is substantially financed and controlled from outside the UK and where the production is attracted to the UK because of script requirements, the UK’s infrastructure or UK tax relief.” See Chapter 2 for a more detailed discussion of this issue.

elsewhere in Europe. This difference is similar to the case of British legislation which is only concerned with foreign satellite channels as potential offenders of 'good taste and decency'. Films from other European countries need to fulfil a stricter regulation, while as long as it is shot in France the content is not relevant. This implies that for the French case it is not only about retaining the 'lion's share' but also about showing off the country and probably benefiting from the tourism industry as well.

In fact, 'screen tourism' and 'TV tourism' is recognised as having a substantial impact on the national economy (for a detailed assessment of the economic impact of film production see Oxford Economics, 2007). For instance, the St. Sulpice Church and the Louvre museum in Paris are reported to have received record visitors after they appeared in the *Da Vinci Code* (Columbia, 2006) (UKFC, 2007b: 60-1), ironically for this discussion, an American production.

It is worth noting that these nationality assessment criteria are those used for quota purposes. Therefore, although it is true that regulation promotes the French language, it might also be argued that the national quota might not be promoting cultural relevant content but simply promoting the industrial production of content in France. Whereas the conditions for the content to be recognised as of French origin are simple, in order to receive public subsidies from the French government the works have to pass a more complicated test applied by the film agency, CNC. Therein lays the main difference between the French and the British system. Whereas in Britain the cultural relevance is inserted within an overall quantitative evaluation of the work, in France there are several tests (*baremes*) which are only focused on the production aspects. The cultural relevance aspects are reserved for a different level and entitle the work to receive additional kind of benefits, not available in the UK.

In the Brazilian case, as there were no national quotas until recently, there were no definitions for 'Brazilian' content to be applied to broadcasting services. When the cinema regulator, Ancine, was created by the Provisional Measure (PM) 2228-1/2001,¹¹¹ the concept of national work was developed in legislation. There are two main differences in the definitions in relation to the other

¹¹¹ Provisional Measures have the same legal powers of acts but follow different legislative proceedings.

case studies. Firstly, the expenditure of the production costs is not assessed and, secondly, the 'cultural test' is not broken up into smaller categories. According to Brazilian regulation, as long as the company is owned by Brazilians and uses a majority of Brazilian nationals during the production of the audiovisual content, including the director, the work will be considered as national. It does not matter which language is used, where the script, story or the main artists come from. Other economic aspects of production are also irrelevant, such as studios used or shooting locations. In that sense, the cultural aspects of the content are irrelevant. It seems that Brazilian policymakers rely solely on the director for introducing Brazilian related aspects into the cultural products. The lack of more detailed descriptions and the disregard for the economic impact of film production shows that Brazilian regulation lags behind the European cases. However, it might also be due to the fact that it is not needed, as the majority of the films are local productions with limited budget as will be seen in Chapter 8.

As in the case of the other two countries studied, after an audiovisual work qualifies as 'Brazilian' the producers can gain access to different funding schemes. However, the major difference with regards to the production lies in the purpose of why national content is produced. As will be seen below, In Brazil there are virtually no quotas in FTA broadcasting and, only since 2011, a timid one for paytv. Therefore, the main purpose of having a 'Brazilian certificate' is to gain access to financial incentives.

As seen in this section all countries have different assessment criteria in place. The industrial aspects are more or less similarly addressed by each country's legislation. In a 'seesaw' regulatory movement, Britain started with weak cultural pre-requisites, changed to an industrial evaluation and, shortly afterwards inserted a cultural relevance sub-category within the overall 'industrial' test. In France the regulatory 'barricade' is focused on protecting the language. Relevance is not measured for quota purposes, just the French language and filming locations. Although other cultural related aspects are assessed by the CNC, in a second stage, they only are for the purposes of receiving public funds. One step behind, Brazil uses a rough criteria for evaluating the nationality of the content which does not take into consideration production or labour costs and does not elaborate on cultural aspects either. However, it must be pointed out that there are calls

for applications (for funding) from different cultural agencies and private companies that take into account cultural aspects.

The European cases have shown that the main reason for fostering the production of national content is the generation of revenues in the country. Perhaps policymakers believe that the cultural relevance will come as a natural by-product of using all those economic pre-conditions. There might be some cultural aspects related to that approach though. For instance, the promotion of the French language and the scoring of points if dealing with a British story are items clearly related to the cultural relevance of the film.

As this investigation suggests, the promotion of the various socio-cultural values analysed in Chapter 6 is not intensively promoted in the regulatory definition of national content. However, this might be the case with specific content quotas. If that is the case, both tools are used in complementary terms: the regulatory definition addresses the economic impact and the quota the socio-cultural aspects. Nevertheless, this solution is not appropriate for the film production activity as there are no content quotas for films and I am not proposing them either. Additionally, the fulfilment of the socio-cultural goals should be analysed for the objective of receiving public financing. Therefore, I believe that there should be a definition for national content, valid for both activities, which should take more into consideration the socio-cultural aspects of communication services alongside the economical assessment so well detailed and implemented in European regulation. Regulators should value the cultural relevance of the content to national audiences, as well as supporting the reflection of societies' diversity, maintain plurality of production and distribution and sustain citizenship, and democracy.

After detailing the different approaches to the definition of what constitutes a content nationally produced, the next section will detail the existing funding mechanisms (the 'pull' tools) available for their production.

7.6 *Funding mechanisms – the regulatory ‘pull’*

While the evaluation of the nationality of the content shifted from loose and simple statements such as “British origin” (Broadcasting Act 1981, s.4.c) or “French original expression” (FoCA 1986, as amended in 1989, Art. 64.2) to a more complex appraisal of human resources, locations and cost evaluations, the funding mechanisms and incentives also increased in complexity. As such, the production of national content is incentivised by different financing schemes which include tax breaks, public and private loans and grants. Adding to this environment, countries and cities frequently compete for international producers, leading to the creation of developing agencies, such as the Film London Agency, Paris Film and *Riofilme* (in Rio de Janeiro). Although the incentives vary substantially across the different countries, they are implemented as economic tools whose main focus is to attract companies and investments, but also to develop local companies. The incentives that will be analysed in this section do not address the socio-cultural objectives behind the production of cultural products. They are, instead, explicitly concerned with generating a favourable and competitive economic environment for the development of a particular industry. In this case, the audiovisual industries of both segments: film and television.

7.6.1 UK – relying on broadcasters

Between 1957 and 1985, the public financing of the British film industry was based on the already mentioned Eady Levy. Within the neo-liberal reforms of the 1980s, the Film Act 1985 abolished the levy (s2) and privatised the national film agency while still financing it for the following five years (J. Hill, 1996: 101). The arrangement left the film production sector at the mercy of the market, and from 1985 to the mid-nineties cinema releases stagnated at around 50 films per year (BFI, 2006: 4; UKFC, 2007a: 8). It was only after seven years of virtually no public funds that the situation was changed. Under a Labour government, with the introduction of the Finance Act 1997, a tax system was put in place for financing the production of British films; the ‘sale and leaseback’ system. By an intricate financial engineering procedure, producers were able to sell the rights to a leasing company and lease them back with the aid of investors and a loan from a bank. Under this scheme 100% of the liable tax was deducted and producers usually kept 12% profit of the original sale (for details see Alberstat, 2004: 216-24). Between 1997 and 2006 releases increased (although not

substantially) to an average of approximately 80 films per year (UKFC, 2007a: 8). The system was stopped in 2006 because of allegedly “widespread abuse of the tax-break by increasingly sophisticated investment schemes” (Davies & Wistreich, 2007: 106).

With the new dynamics introduced by the Finance Act 2006, films currently have to pass the ‘cultural test’ described before. With the ‘Britishness’ approved, the production company is entitled to a tax relief system, in terms of income tax, corporation tax and capital gains tax.¹¹² This system, which is currently in use, foresees that producers will receive back from the government (by means of tax reliefs) approximately 20% of what has been spent in the UK (Davies & Wistreich, 2007: 266-7).¹¹³

As with other countries, while the regulation creates the incentives for those who invest in productions, there are two main sources of funding available: public grants and broadcasters’ commissioning. The primary source of public grants is the Film Fund which has a yearly budget of £15m and is administered by the BFI with resources derived from the National Lottery (UKFC, 2011). Within the same budgetary scale, the film arms BBC Film and Film4 Productions (owned by Channel 4) invest around £10m-£12m each per year (Lords, 2010: 35). However, more significant than those resources given to the film industry is broadcasting commissioning for the production of television content.

As already discussed, UK legislation mandates that at least 25% of programming should be produced by independent companies. As a result, broadcasting commissioning feeds a strong independent production sector. For example, the BBC invested £460m on independent productions and Channel 4, £578m, in 2010 alone (BBC, 2010: 23; Channel Four, 2010: 9-10).

However, the blossoming of independent production in the UK was not only due to the investments from broadcasters. As previously discussed in this chapter, as a result of the CA 2003, independent producers are now allowed to keep the secondary rights to a programme. While under

¹¹² The tax relief scheme is currently dictated by the Finance Act 2006. A detailed description of its mechanisms is beyond the objectives of this thesis.

¹¹³ According to the authors, for larger budget films – over £20m – the maximum net benefit is 16%.

the previous regulations broadcasters could use their significant market power to force the selling of all secondary rights to them in the commissioning process, now producers are free to negotiate these rights with other companies, nationally and abroad. This legislative provision was regarded as fundamental to the vigorous growth and exports achieved by the sector (Chalaby, 2010; Haynes, 2005: 89-90) However, that approach can also result in deficit revenues for broadcasters and funding for producers.¹¹⁴ These impacts will be revealed in the market analysis in Chapter 8.

7.6.2 France – automatic revenues for established filmmakers

France is usually cited as the country where more regulatory effort has been spent to support national content, with particular emphasis on fostering the film industry (see for example Levy, 1999: 20-2). The French approach to supporting film production and distribution is based on the construction of an elaborate support framework. A so-called 'structured financing system' is based on aid from the CNC (which uses the Cosip – a public fund formed by a special tax on basically every service related to the distribution of content) and support from Sofica (Societe pour le Financement de l'Industrie Cinematographique et Audiovisuelle - special companies set up exclusively for financing and commercialising the audiovisual production) (Jackel, 1999: 181). Besides those two paths there is broadcasters' commissioning in two forms: (1) legal obligations (the *contributions*, discussed in more detail later on), and; (2) voluntary (free-market agreements, albeit regulated). The compulsory *contributions* are directly stipulated as a percentage of television companies' revenues. Therefore, the main difference between the French and the British setups is that in France, alongside a monetary obligation for broadcasters to invest in production, there is an ongoing levy on cinema admissions, telecommunication services and electronics. In the UK there is no such legal levy (or a set financial obligation to invest in production). As a result, the French cinema agency, CNC, administers a substantial annual budget as will be seen later on.

Another relevant difference between both countries is that in the French case there is automatic aid available for national content purely based on an economic assessment (the one used for evaluating the nationality of the content, described on Chapter 7.5) and a selective subsidy which is

¹¹⁴ It might be argued that by acquiring the primary rights only, broadcasters pay less for the commissioned content and independent producers are forced to seek other markets to raise the full cost of productions.

granted on the basis of other qualitative and cultural aspects decided by a commission appointed by the CNC (Davies & Wistreich, 2007: 332).¹¹⁵ The automatic aid was envisaged to increase the dynamism of the French industry, entitling registered producers to receive direct financing proportionate to the performances of their previous works (CNC, 2007: 5). Initially restricted to the cinema, it now includes television and home video performances as well. Alternatively, the selective subsidy for films is an interest-free loan as advance-on-receipts (Davies & Wistreich, 2007: 332). Digital media and innovative production techniques are also financed by selective aids by recent modifications introduced in the system (CNC, 2011e: 15-8).

These financial aids administered by the CNC date back to 1959 and passed through several reforms (CNC, 2007: 5). In 1985 the Sofica was created (Act 11-07-1985). The system enabled private investors to deduct from the liable taxes the sums invested in Sofica companies, which in turn are obliged to invest all the resources in the production of French works (Eling, 1999: 112).

As for the financing of television programmes, public funding is done by the taxation that forms the Cosip (Compte de Soutien à l'Industrie des Programmes Audiovisuels). The fund, created in 1986, is also administered by the CNC and the resources are used for the production of television films (38%) and for television programmes (62%) (Brochand, 1996: 58). The Cosip is divided into automatic and selective tranches too. The former is used by independent producers that already had productions aired by broadcasting channels and the latter for independent companies new in the market.

I will return to the theme of independent producers later on, but for now it is important to highlight that the automatic aid mode which was introduced in 1989 by the Minister of Culture, Jack Lang, amid the so-called Plan Lang. This reform is often regarded as being at the “heart of French film policy” (Cocq & Messerlin, 2003: 12). Designed for providing steady and continuous public subsidies for the production sector, mainly the film industry, the scheme was regarded by some as beneficial for big media groups only as it favoured big-budget and successful pro-market films (Guerrieri et al., 2005: 32-4). On the other hand, the selective aid is regarded by some as a vicious

¹¹⁵ For more details on cultural and economic assessments see Annex 7.

circle where the commissioners (who decide the grants given) are from the same industry “which it claims to control” (Leveratto, 2007: 187). I would like to remark that in France, the socio-cultural aspects which may be taken into consideration by the commissioners when analysing projects for selective aid are subjective and not clearly stated.

Thus, in France, the subsidies are either granted for established filmmakers, in the case of the automatic aid, or by a subjective evaluation of a commission, in the case of the selective aid, which may or may not take into consideration socio-cultural concerns. However, that uncertainty is not the case for the Cosip (the fund for television programmes). The resources can only be applied to works with cultural, social, technological, scientific or economic related content and exclude reality TV, games and other similar programmes from being financed by public moneys (CNC, 2011g: 3). Those restrictions have clear implications for often formatted ‘light entertainment’. That difference indicates that French legislators are not concerned with the kind of content produced when funding the film industry but have put some restrictions in place when it comes to television content.

Returning to the analysis of film financing, while the funding might be mainly appropriated by big groups, as was also noted in the case of the British setup, the sources of the French funding system are different. In Britain there is a small amount derived from the lottery and the biggest share comes from broadcasting commissioning. In France too, broadcasting commissioning is significant. However, funds from the Cosip are responsible for 11% of the resources of the independent sector (CSA, 2009c: 12-3). The ‘pot’ managed by the CNC as a result of the comprehensive levies accounts for, in 2011, €580m due to the Cosip (or 80% of the total approximately), €130m due to cinema tickets and €38m due to home-video (Senat, 2011). An overwhelming difference compared to the British Film Fund of around £15m as mentioned previously.

From one side the French scheme is regarded by some as a heavy ‘subsidiser’ of the film industry and a result of the political power of big national studios. Although, from the other side, it may also be regarded as a cross-subsidy derived not only from broadcasters but also from foreign films. As Czepek, Hellwig and Nowak (2009: 269) acknowledge, the more success a film has, the more it will

contribute to public funding. As the authors remark “[t]he Cosip can be ironically described as a system through which American cultural imperialism nourishes French cultural diversity” (ibid).

With the introduction of new distribution technologies and digitalisation, the support given to national film industries in France is far from being diminished. Instead, economic contributions began, in 2001 and 2002, in a first stage of integrating both television and film industries’ funding policies. French legislation included these developments into the CNC administered film financing scheme with the enactment of specific production financing decrees for each of the different distribution services.¹¹⁶ French regulators also decided, when enacting these decrees, that the different broadcasting and telecommunication services would have different contribution levels (those percentages will be discussed later on in this chapter).

A second stage of integration between both cinema and television policies was introduced in 2004. The Finance Act 2004 extended the tax credit system, originally given to the cinema industries, to television production companies as well (Regourd, 2007: 172). This movement may be regarded as reflecting the inter-dependency between television and cinemas industries discussed in Chapter 3. Moreover, it also indicates that French policymakers are turning their attention to the television industries too. At this point it is important to remark that not only the film industry benefits from the CNC’s funding. The television independent production sector also receives funding from the CNC via the Cosip. However, because of the independent quota being implemented in terms of percentage of programming expenditure (FoCA as amended in 2000, Art. 71) instead of programming hours as in the British case, the funding might be used inefficiently.

As it is, the French independent quota might be regarded simply as an expenditure target with no relation to the amount of hours actually produced. In other words, as long as the broadcasters spend 10% with independent productions, no matter the broadcasting time, the quota is fulfilled. On the other hand, economic efficiency, or the so-called ‘value for money’, arguably a fundamental principle so well rooted in British culture and policymaking process, favours the quota in terms of

¹¹⁶ Decrees 2001-609 (analogue channels contribution), 1332 (analogue terrestrial paytv), 1333 (digital terrestrial), and 2002-140 (satellite and cable services).

hours of output as is the case in the UK. Possibly, the British implementation may be responsible for the better results of the independent production sector in that country.

Notwithstanding that critique, the CSA, the broadcaster regulator, reported a robust result of that mixed source of financing and redistribution. The independent production sector totalled a turnover of €1,100m in 2006-2007 (CSA, 2009c: 12-13). As Chapter 8 will show, that total is comparable with the one related to the British independent sector. However, those numbers also show that while the CNC relies heavily on resources from the Cosip (80% of CNC budget as mentioned earlier), the television production industry depends on governmental funds only marginally (11% as mentioned before). This difference might be attributed to the increase of scale of the broadcasting business (due to liberalisation, digitalisation and digital convergence). The film agency, CNC, in its 2010 annual report praised the fact that the French industry produced a record 261 new films (almost double the British official figures) with total investments of €1,400m (CNC, 2010b). Approximately half of that investment (almost €750m) came from the different broadcasting services. The same report also remarked that broadcasters spent €793m (a similar figure to the one diverted to the film industry) in television programmes which should be, actually, their core business. The French subsidising system corroborates the perception, as noted by for example Levy (1999: 20), Jackel (1999: 175) and Collins (2002: 55), that French policy stakeholders prioritise cinema as a 'higher' culture as opposed to mass-media television.

7.6.3 Brazil – broadcasters' limited contribution to the independent sector

Arguably the first influential Act that dealt with the financing of culture in Brazil was the Sarney Act 1986, which included a scheme for the patronage of the arts. Under these provisions any company could declare donations to cultural projects as expenses and could deduct up to 100% of that value from the liable taxes (Art. 1). Because of its broad scope and loose definitions, it is estimated that the Act generated more than £40m in tax evasion during the four years that it lasted (Franca, 2005: 37). The Act was revoked and replaced by the Rouanet Act 8313/1991, still partially in place. Instead of allowing direct contributions to cultural projects and deducting these from taxes, the Act creates a cultural fund (*Fundo Nacional da Cultura* - FNC), with a specific category for the

audiovisual sector (*Fundo Setorial do Audiovisual* - FSA), which manages the donations from companies and citizens in a scheme similar to the French Cosip.¹¹⁷ The Act also creates a network of funding companies similar to the French Sofica, the Ficart (Cultural and Artistic Investments Funds), which are tax free companies for the financing of cultural projects (Art. 8).

With the new presidency of Itamar Franco, two years after the Rouanet Act, a specific financing scheme for developing the independent television industry was introduced without obligations – and financial contributions - to commercial broadcasters. The Audiovisual Act 8685/1993, enables tax payers to invest in independently produced works for television and film (Art. 1 and 1-A).¹¹⁸ However, in order to not repeat the same errors of the Sarney Act, the scheme only allows deductions on projects approved by the Ministry of Culture, later transferred to the duties of the film agency Ancine.

When the cinema agency, Ancine, was created nearly a decade after the enactment of those rules another scheme for financing independent productions was introduced. The fees that are normally owed when registering imported films and television programmes are exempted if the owner of the rights invests in independent productions (Art. 39.x).¹¹⁹ The last major alteration in the production legislative framework was introduced in 2002 when the Audiovisual Act benefits were extended, allowing for more deductions from income tax (Art. 3).¹²⁰ A limit, however, was included in the projects and, currently, each project can receive deductible donations up to the limit of £2.7m (Art. 2.2.ii). On the one hand, compared to the British legal limit of £20m for low budget films, Brazilian legislation may be more in tune with small projects, but it may also be uncompetitive to attract big or inward productions. On the other hand, two of the biggest national hits, *Dois Filhos de Francisco* (Columbia, 2005) and *Tropa de Elite* (Elite Squad, Zazen, 2007), had budgets of approximately £2m and £2.5m according to the IMDB database. Those values suggest that the regulatory limit might be adequate for national films.

¹¹⁷ Companies can deduct up to 40% of the donations (and citizens up to 80%) from their income tax (Art. 26) and the fund can contribute up to 80% of the costs of approved projects. According to the weekly magazine *Isto E* (2008), Petrobras (oil company, invested, £60m in 2007), Vale (mining, £11m), Telefonica (telephony, £7m), Banco do Brasil (bank, £7m), Bradesco (bank, £6m) and Eletrobras (energy, £5m) are the biggest users of the financing incentives of the Rouanet Act.

¹¹⁸ The Act allows deductions from income tax (up to a yearly cap of 4% for companies and 6% for citizens).

¹¹⁹ The owner of the rights must invest up to 3% of the liable taxes in independent productions.

¹²⁰ Up to 70% of the investments can be deducted from income tax.

As a result of these incentives, the film agency collected, in 2010, £42m to be used for the promotion of national content (Ancine, 2010b).¹²¹ Comparing with French funds that amount is meagre. However, it almost triples the amount available to the British agency, BFI. On the other hand, in the same report the agency also states that Brazil sends abroad approximately £600m per year to international rights owners due to the exhibition of imported audiovisual works in the country. This disparity shows that international rights owners invest in the country less than 10% of the revenues actually sent abroad. Brazil needs to re-equilibrate this trade and obviously the schemes available will not be enough. At this point it is fair to point out that, similar to the other countries, there are additional public grants available for productions, awarded by Ancine and by the Ministry of Culture (Ancine, 2011b; Ministerio da Cultura, 2011). Although, as already commented, the budgets of those agencies are far smaller than the ones handled by the French CNC.

That situation was changed slightly in 2011. The PA 2011 contributed to a significant breakthrough with regards to production financing. The act diverted 10% of the annual inspection and licensing fees, to be paid by all telecommunication and broadcasting companies and administered by the telecommunication agency Anatel,¹²² towards the production of national content (Art. 28) and is, therefore, managed by the cinema agency Ancine. According to Federal Deputy Jorge Bittar's¹²³ declarations (Mazza, 2007), this contribution may inject up to £110m per year towards national production. However, this is only a potentiality. Because of a past of high international debt and periods of high inflation, the national government, using its discretionary power, diverts taxes and levies originally created for specific purposes to finance the state-debt. This is a recurrent and historical practice and is subject to a continuous debate in Brazilian society. There is no evidence so far that it would be substantially different for this specific fund.

¹²¹ The value reported by the agency includes the international right owners' contribution to independent production.

¹²² The annual inspection fee is due by all communication companies, including telephone companies, broadcasters and internet providers and is directed towards the Fistel (Fundo de Fiscalizacao das Telecomunicacoes) administered by the telecommunication agency Anatel. This fund is object of constant diversion and usually, as widely reported in the press (see for instance Telesintese, 2008), only 30% of the resources are spent for the original purposes of inspecting the services and maintaining the agency.

¹²³ Deputy Bittar was responsible for the first report on the bill in the Communications and Technology Committee (CCTCI) in the Camara dos Deputados (Lower House) and the approved act is a result of his report and redesign of the bill. Amongst the suggestions introduced were the national content quotas.

As the reader will have noticed, the funding schemes are varied and complex. Hence, in the next section I will summarise those mechanisms.

7.6.4 Summary

Two different approaches can be identified with regards to the funding of national content, both films and independent television programmes: public funding and commissions by broadcasters.

Figure 7 shows the existing mechanisms used by the selected countries.

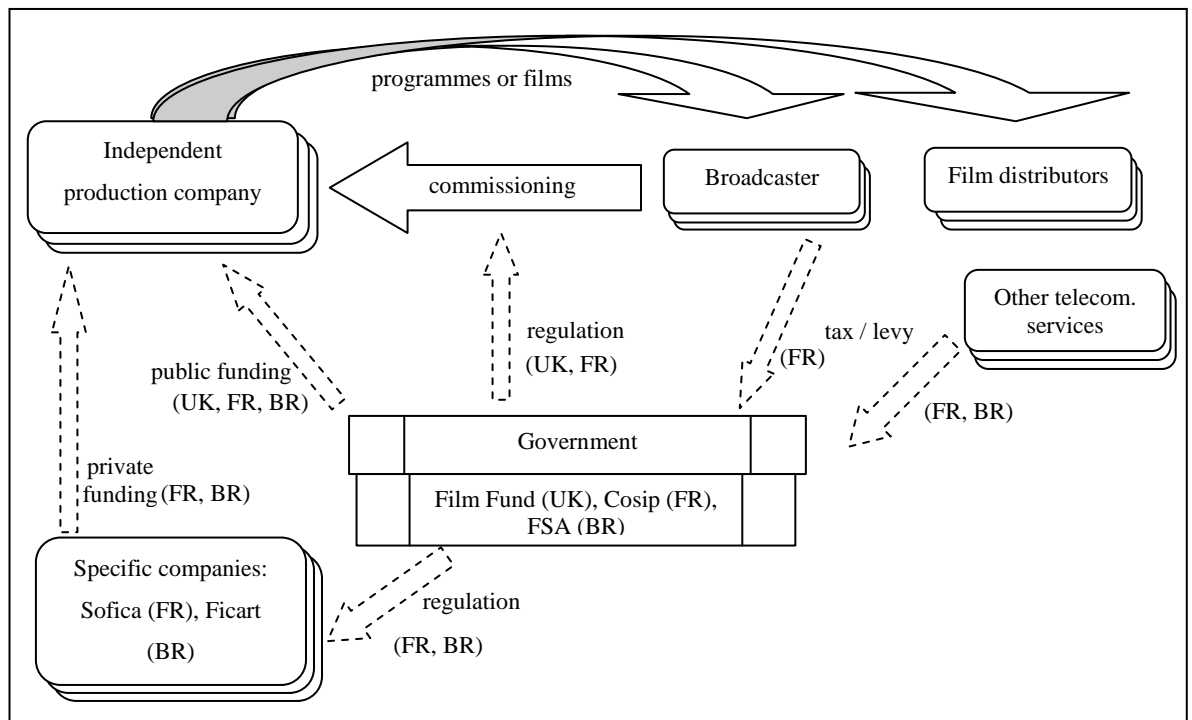


Figure 7 – Different mechanisms for financing independent productions

Although Figure 7 fails to indicate the relative importance of each of the funding mechanisms for each country, it indicates which funding paths are used in each country. The UK and France rely mainly on broadcasting commissioning for the production of independent content and national governments strongly intervene by prescribing the conditions of those commercial relations. Brazil has a production sector strongly dependent on broadcasters and the public administration chose not to interfere in those relationships.

France and Brazil enabled the creation of specific companies for investing in the production of films and programmes with tax incentives (the Sofica in France and Ficart in Brazil). All three countries have public funding available for production as indicated in Figure 7. However, only France collects financial resources from broadcasters, whilst both France and Brazil impose a levy over other communication services directed towards the production of independent content.¹²⁴ Those two countries embrace that approach with different intensity though. While France has a strong, wealthy and comprehensive scheme of taxation for funding films and independent producers, Brazil modestly taxes telecommunication services.¹²⁵ Brazilian legislation, moreover, does not impose any levy on commercial broadcasters' revenues in order to finance independent productions as the French system does. In fact, commercial broadcasters are exempted from all main forms of taxation.¹²⁶

Having discussed the 'pull' policies for the production and financing of national content, the next section will focus on the specific content obligations: the broadcasting quotas.

7.7 Quotas

The analysis of Chapter 6, while performing the first step of the research, highlighted the different socio-cultural objectives given by policymakers to broadcasting services during recent years. However, the overall aims given by the legislation may be reinforced or eased depending on the specific content obligations contained in the licenses of each broadcaster. Legislation might promote the production of national content that propitiates debates on current affairs (British CA 2003, s264.6.c), social cohesion (French FoCA 1986, as amended in 2006, Art. 43-11) and national culture (Brazilian Federal Constitution, Art. 220). But those aims, if not properly enforced, can become nothing more than mere aspirations. This section will discuss the different quotas

¹²⁴ As mentioned in this chapter, Brazilian broadcasters pay a small levy towards production, derived from the regulator's inspection fee, and unrelated to their revenues.

¹²⁵ According to estimates of telecommunication magazines, nearly a half of the fund corresponds to levies on mobile phones (Telesintese, 2008).

¹²⁶ For instance, a special tax exemption was included in an amendment to the Federal Constitution (Art. 155), in 2003. The article exempts broadcasters from paying sales taxes, due to the *States* (the ICMS tax, equivalent to the VAT), on advertisement revenues, which would be the highest source of income for those companies.

prescribed for the broadcasters of each of the selected countries for the fulfilment of those socio-cultural objectives highlighted in the first step. The analysis of this section will highlight what kind of content and which types of (television) schedules are designed by policymakers for the main terrestrial channels. By analysing these quotas the investigation will indicate how and to what extent the production of national content is promoted. Additionally, the analysis will indicate what type of programmes and socio-cultural objectives are fostered by regulation.

Before analysing how the quotas have developed in the selected countries, first the types of quotas need to be introduced. In all countries these obligations are set either in terms of minimum number of hours per year or in terms of a percentage of the total television output, as listed below:

- a) Programme types with quotas in terms of minimum number of hours per year: arts, education, children, religion, national and regional news, current affairs and citizenship, regional programmes and sport; and
- b) Quotas established in terms of % of the total television output: independent productions, original productions, regional programmes, programmes produced outside the main producing area,¹²⁷ maximum share of sports programmes and feature films, proportion of budget spent on content.

In theory, by dictating different types and quantities of content obligations, regulators shape channels' output and create a broadcasting system which is diverse and complementary. Both categories of quotas can be related to the intertwined socio-cultural aims analysed in Chapter 6 – diversity (children, art, original productions, maximum sports and feature films, expenditure), plurality (independent productions, regional programmes), democracy (national and regional news), citizenry (education, current affairs and citizenship) and cultural relevance (original productions, arts, religion and sport). Alternatively, the second category, the percentage quotas, is used more for the economic development of the production industries.

¹²⁷ In the UK, the main producing region is referred to as outside the M25 (the motorway that circumvents the Greater London area).

Another point that needs clarification before entering into the discussion of each case study is the EU legislation with which the UK and France must comply. Specifically related to this research, the countries follow the already mentioned AVMS (the former TWF) Directive 2007. With regards to the distribution of national content, this legal document states:

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. (Art. 16)

In addition, the Directive states that at least 10% of the time or of broadcasters' budget should consist of "European works created by producers who are independent of broadcasters" (Art. 17). For further reference, the tables containing all the regulatory quotas used in this research are available in Annex 8.

7.7.1 The British licensing system

As mentioned in Chapter 5, since the Broadcasting Act (BA) 1990 the BBC (s186.1), ITV (Channel 3) (s16.12.h), Channel 4 (s25.2.f) and Channel 5 (s29.2.b) have to include in their schedules 25% of independently produced content. In addition, the following BA 1996 included a 10% independent production obligation for all digital channels (s19.2). The Communication Act (CA) 2003 extended the 25% independent production obligation to "every licensed public service channel" (s277) and the 10% quota to "every digital television programme service that is not comprised in a licensed public service channel" (s309). Although there is no clear definition in the act of what constitutes a "licensed public service channel", the 25% rule applies to BBC 1, BBC 2, ITV 1, Channel 4, Channel 5 (and the Welsh S4C); to all other digital channels available without subscription the 10% rule would apply. Ofcom closely monitors the main terrestrial channels with periodic reports (see Ofcom, 2010b). However, there is no data available from Ofcom on the compliance of the digital channels.

Apart from these independent production obligations, further specific content quotas are set in each channel's license.¹²⁸ The following table shows the different hourly quotas for each main FTA broadcaster in decreasing order.

Table 9 – Stipulated content quotas in total hours by channel per year in 2009 by decreasing order

BBC 1		BBC 2		Channel 5		ITV		Channel 4	
Regional news	3,920	Regional programmes incl. News	3,135	Children	1,088	Regional news	365	News	208
Regional programmes incl. news	3,135	Children	750	News	469	National news	260	Current affairs	208
National news	1,380	Education (factual prog.)	520	Education	156	Regional programmes	208	Schools	0.5
Children	750	Regional programmes excl. News	467	Current affairs	130	National current affairs	52	Total	417
Education (factual prog.)	700	Arts	200	Drama & other	126	Regional current affairs	43		
Regional programmes excl news	467	Current affairs/ Citizenship	182	Religion	52	Total	928		
Current affairs/ Citizenship	182	Religion	55	Total	2,021				
Religion	55	Total	5,309						
Arts	45								
Total	10,634								

Source: Annex 8, Tables 56 to 63.

Note: The categories are not exclusive, i.e. one programme can be classified in more than one category. Therefore, the total amount of quotas is higher than the actual air-time in the case of the BBC 1.

Table 9 shows that for all but Channel 5 regulators stress the importance of FTA for informing the audiences, as the biggest obligation for these channels is the delivery of news. Although these channels are often classified as generalist, the snapshot of the latest obligations also indicates a different orientation for each channel. The BBC 1 is strongly focused on news and regional

¹²⁸ As mention in Chapter 5, the main statutory instrument that governs the BBC is the BBC Royal Charter granted by the head of state (originally granted by the King George V and currently by the Queen Elizabeth II) and detailed by an Agreement (which serves as a license) between the Secretary of State and the broadcaster. Both the charter and agreement are renewed periodically and the present ones are valid for the period 2007-2016. Because of the legal power of the Royal Charter, the CA 2003 dictates that the regulatory powers of Ofcom towards the BBC are limited “to the extent that provision for them to do so is contained in – (a) the BBC Charter and Agreement, and...” (s198.1). In practice, this arrangement gives the BBC Trust the task of regulating the content delivered by the BBC and leaves Ofcom more directed to regulate the technicalities of the delivery of the service. However, as foreseen by the current charter and agreement, the content broadcast by the BBC also has to comply with the CA 2003 (as is the case, for instance, with the 25% independent content rule).

programmes that shall be included in all its twenty regional variations. On BBC 2, although there are regional content obligations, children, education and arts programmes form a significant proportion of the obligations. Channel 5 has considerable obligations to children, ITV has no significant secondary focus (besides news) and for Channel 4, sustaining citizenry is as important as delivering news to audiences.

The total obligations also vary significantly between channels. Of the commercial FTA channels, in 2009 Channel 4, being state-owned, has smaller content obligations, and Channel 5, privately owned and profit seeking, the most. The increased control on Channel 5 might be explained by the low short-term commercial success expected when the license was awarded (Crisell, 2002: 237; Franklin, 2001: 62). That concern could have driven regulators to tighten the rules regarding which kind of content should be used on that particular channel, in order to mitigate possible widespread use of cheaper imported programmes and 'light' entertainment and make sure it would broadcast a diverse range of programmes. But if from one side the channel was heavily regulated, from the other side, by the original production quota as will be pointed out later on, while discussing Table 10, the channel was also the least regulated.

The BBC's channels have, as expected, the most extensive obligations. In fact, without considering the other quotas from its spin-off digital channels, the PSB has to comply with four times more quota obligations in terms of air-time than the other main terrestrials.¹²⁹ This disparity has increased through the period under analysis as we will see later on.

DTV opened the opportunity for the creation of new channels, but it is only the BBC that has specific content quota obligations for those newly created digital channels. Among other obligations, BBC 3 has 125 hours quota for educational programmes and BBC 4 has to broadcast a minimum of 20 new films per year, 100 hours of arts and 110 hours of educational programmes. The children's channel CBBC has an obligation to broadcast more than 1,000 hours of educational and specific children's programmes. The news channels BBC News and BBC Parliament also have

¹²⁹ It must be noted that some quotas may count for more than one category. For instance one educational programme, targeted to children and regionally produced would count for all the three different quotas. In addition, the BBC 1 has twenty regional variations where the quota should be included.

specific content to deliver. BBC News has a specific obligation of covering a minimum of 100 hours of sports news and the parliamentary channel has to cover regional and European parliament (260 and 100 hours respectively). The other main terrestrials' new spin-off digital channels, such as ITV 2 to 4 or 5 *USA* or 5* (from Channel 5), do not have specific content quotas and only have to comply with the general quotas set as percentages of television output (see Annex 8, Tables 58 to 60).

It is important to note that since the year 2002, the BBC issues a Statement of Programme Policy which details the different quotas agreed for each of its channels on a yearly basis. Before 2002, the commitments stating the minimum production of specific content, if any, were not published. The annual reports only indicated the total amounts of television output per genre. This point indicates that the PSB was more loosely regulated externally in terms of official quota requirements than the other broadcasters which had explicit obligations in their licences. However, the analysis of the output of the BBC, as stated in their annual reports, shows that the broadcaster did comply with higher proportions of the same kind of content that were prescribed as obligations for the other main terrestrials. It seems that the broadcaster did not need to be closely regulated; they internally agreed to pursue socio-cultural goals. For instance, while ITV had a total obligation of 806 hours in 1993, as shown in Figure 8, the BBC produced more than 8,000 hours of these same kinds of content (Annex 8, Table 56).

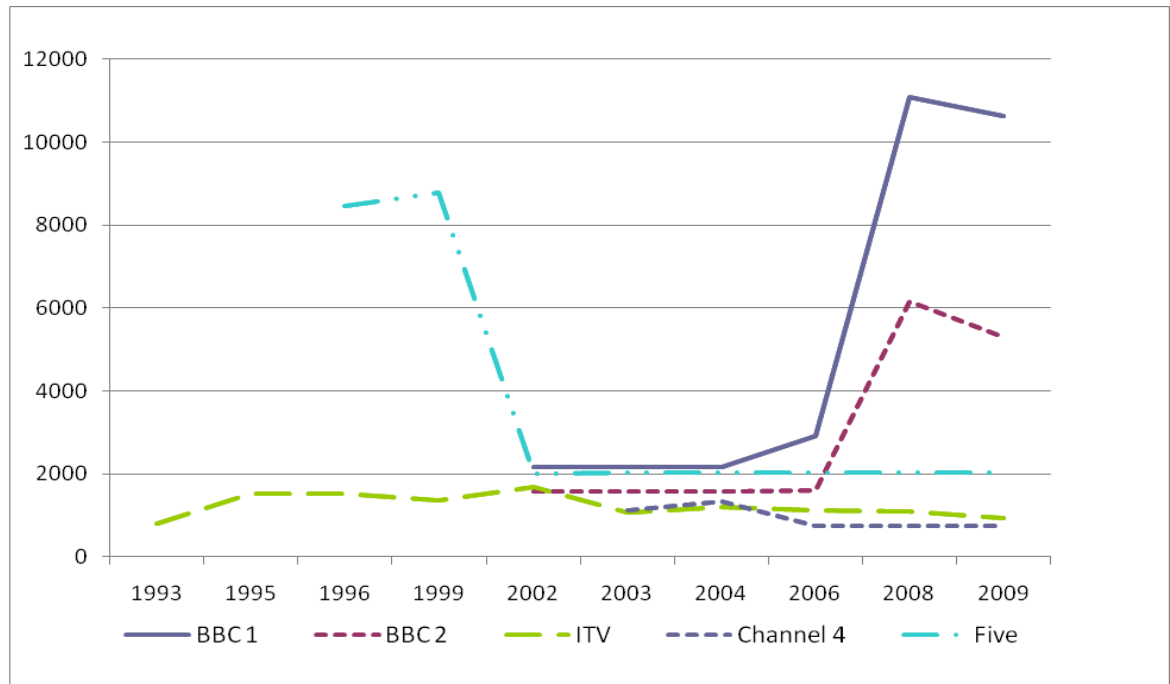


Figure 8 – Total hours of quotas per year of British main terrestrial channels

Source: Annex 8, Tables 56 to 63.

Figure 8 shows the total amount in hours of content quotas per year for each broadcaster. The graph shows that throughout the period analysed, there has been an increase in the BBC's content obligations, particularly after the rollout of the new digital channels which started in 2003.

Regulators thus, at the same time that they granted more services to the BBC, tightened their control. While for the other channels the total amount of specific content required has been relaxed, particularly in the case of Channel 5.

The decreasing obligations towards Channel 5 may be explained by economic and regulatory reasons. The initial license for the newest of the main FTA channels, Channel 5, stated that the output should consist of "high quality" programmes (ITC, 1996a: 34). However, as when discussing what offends 'good taste', 'quality' is a relative and difficult concept to prescribe in legislation and even more difficult to assess by regulators. In addition to this vague obligation, as the channel experienced the expected initial problems, in 1998, the chief executive David Elstein declared that there was a difficulty in achieving the regulatory goals:

We live in two realities...the economic one and the regulatory one... we aim for good quality and occasionally high quality...High quality on Channel 5 is relatively rare (cited in Goode, 2007: 119-20).

Or as the programme director Dawn Airey had described more plainly earlier on, instead of complying with specific content, the channel offered “football, films and fucking” (cited in Goode, 2007: 118). Reflecting this regulatory and economic struggle, in an attempt to reach an optimal balance between the amounts of the specific content that should be broadcast, since the first license was issued in 1996 until 2001, the channel applied for, and was granted with, seven variations of the license. Eventually, in 2001, the regulatory body decided to diminish the obligations and, instead of dictating more than 8,000 hours in specific content obligations, reduced the quotas to just over 2,000 hours, setting another 600 hours as additional “indicative targets” (ITC, 2001). The failure of the regulatory arrangement envisaged for Channel 5 suggests that the establishment of obligations is not a guarantee that the broadcaster will meet those specific standards, attain a certain identity or deliver certain socio-cultural goals.

The second sets of rules, the proportional quotas established as a percentage of the overall television output have also shown some differences between the channels as Table 10 shows.

Table 10 – Proportional quotas in 2009 for main terrestrials

Category	BBC 1	BBC 2	ITV Regional	ITV National	Channel 4	Channel 5
Original productions (%)	70	70	65	80	56	51
Regional production in the area (%)	95	95				
Producing programmes outside the M25 area (£%/h%) (1)	30/25	30/25	35/35		35/35	10/10

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Source: Annex 8, Tables 56 to 63.

Although Table 9 indicated that Channel 5 has more content obligation than the other terrestrials in terms of stipulated hours (apart from the BBC), the proportional quotas shown in Table 10 indicate that Channel 5 may operate with fewer resources. Channel 5 needs to acquire, proportionally, fewer original productions and has a smaller obligation to invest outside the London area. In contrast, the other broadcasters have to invest outside the capital, proportionally, three times as much. Additionally, in the case of the BBC, it is the only national broadcaster with an obligation to produce regional programmes in the area of broadcast. While the decentralisation of production facilities complies with broader objectives of increasing diversity and plurality, the regionalisation of

production may increase the production costs and, therefore, is a measure that commercial broadcasters may oppose. In another quota, maximum repeats (not listed in Table 10), Channel 5 is also favoured. In 1996 the ceiling was 21% and it was gradually increased to 40% in the last license of 2003 (see Annex 8, Table 63 for details). That is another measure taken to ease the costs for programming. The national license of ITV has the highest obligations for original productions (80%), as the national service's main purpose is the broadcast of a national news programme.

As in the case of the hourly quotas, the digital BBC channels are the only channels with additional proportional quotas (albeit not listed in Table 10; see Annex 8, Tables 58 to 60). While all the other digital broadcasters have to comply with the 10% independent content legal obligation, the BBC agreed to extend the same 25% independent content obligation to the BBC 3, BBC 4, CBBC and Cbeebies. Interestingly, these four digital channels have higher European requirements than all the other FTA broadcasters, varying from 70% to 90%. In addition to those quotas, the BBC's digital channels (including BBC News and Parliament) also have to comply with regional production and original productions quotas.

At this point it is important to remark that the regulation does not insist that independent content has to be of British origin. Albeit there is no such explicit obligation (only that the production company has to be independent from a British broadcaster),¹³⁰ original content has to be commissioned or produced by British broadcasters for first viewing in the UK. Thus it is most likely that those programmes will be produced in the UK.¹³¹ Additionally, perhaps the British legislation does not worry about the country of origin of the content because, as will be seen in detail in Chapter 8, the television industry is historically strong. This flexibility on nationality is a

¹³⁰ Statutory Instrument 1991 No. 1408, The Broadcasting (Independent Productions) Order 2004 (as amended by the Statutory Instrument 1995 No. 1925), indicates that any programme is considered independent to which broadcasters contributed less than 25% of the production costs (s2.1) and that are produced by companies where one broadcaster has less than 25% of shareholding or two broadcasters have less than 50% of shareholding (s3.4). The Statutory Instrument 2003 No. 1672, The Broadcasting (Independent Productions) (Amendment) Order 2003, clarifies that the shareholding limit only applies to British broadcasters. Therefore, a company owned by another European broadcaster would be considered as independent.

¹³¹ Statutory Instrument 2004 No. 1652, Broadcasting (Original Productions) Order 2004, s3, states that original productions are European programmes “commissioned by or for a licensed public service channel with a view to their first showing on television in the United Kingdom.”

considerable difference between the two European countries studied, as will become clear in the next section.

7.7.2 The French *infra* legal obligations

While content obligations are set under broadcasters' licenses for the British case, the obligations in France are stated in the broadcaster's *Convention, Cahier des Charges* (similar to the BBC's agreement) or, currently, *Autorisation*.¹³²

In the case of the PSB France 2 (the former Antenne 2) and France 3 (former France Regions), a further analysis on the *Cahier des Charges* approved by the Decree 87-717 indicates that additional specific content obligations, such as art (Art. 30) or varieties (Art. 35), could be set by annual dispositions agreed internally by the broadcaster for the execution of the *Cahier des Charges*. However, as those were internal decisions and not publicly available (at least not found in the sources used in this research), those 'obligations' cannot be quantified. Fortunately, from the year 2000, as a result of an amendment on the Decree 87-717, content obligations are all made public in the *Bilan*, the yearbooks, which the regulator publishes for each of the main terrestrial broadcasters and, more recently, for relevant digital channels.

Two characteristics which distinguish the French quota setup from the British are the increased importance of regulations both for the broadcasting of films on television services and for the production of films with revenues diverted from broadcasters. It is important to remark that this 'diversion' is a legal levy on broadcasters' revenues collected by the CNC and totally independent from broadcasters' commissioning. Those financing regulations have been object of continuous adjustments and modifications of scope. Figure 9 shows the changes of broadcasters' contributions towards the production of programmes and films.

¹³² The enactment of the 'licenses' is either by ministerial Decrees or by *Decision* of the French broadcasting regulator CSA.

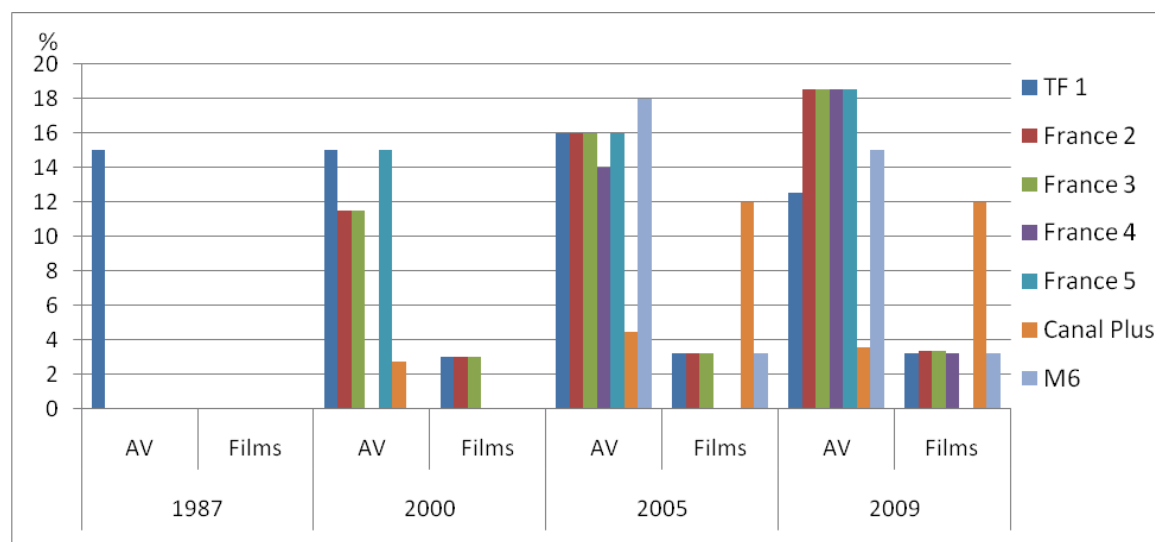


Figure 9 – Legal contributions towards the production of audiovisual (AV) and film content in percentage of broadcaster's revenues

Source: Annex 8, Tables 64 to 67.

The previous Figure 9 shows that the majority of the contribution is directed towards the production of television content. Data shows that while for commercial broadcasters (TF1, Canal Plus and M6) the contribution towards the production of television content has diminished, the PSB's channels had their levy continuously increased. Also reflecting Canal Plus' special focus on films (and sports), the subscription-to-air broadcaster has the smallest obligations towards the production of television content (3.6%) while the others contribute between 12.5% and 18.5% of their revenues. The figure also demonstrates that the contribution towards film production augmented through time for all channels. While in 1987 there was no cross-contribution at all, since the year 2000 the three most viewed channels (TF1, France 2 and France 3) have been obliged to contribute. Currently, all but France 5 contribute.¹³³ In regards to film, the most relevant contribution at present is made by Canal Plus. While the subscription-to-air channel contributes with 12% of their revenues, the other private channels contribute with 3.2% and the ones from France Televisions, slightly higher, 3.4%.

A closer look at the regulations of these obligations reveals that the investment is directed into specific sub-categories. Usually, two thirds (2/3) must be invested in the production of independent productions, French and European works and original works (normally 2/3 or up to 3/4 of the total obligation) (see Annex 8, Tables 64 to 67).

¹³³ Probably France 5 is the only channel that does not contribute because it is still related to the Arte channel (a joint venture with the German PSBs and therefore subjected to a different supranational regulation).

The other set of obligations, stated as total hours per year are not as substantial at least for most French broadcasters as is the case for the British terrestrials. Table 11 shows the total amounts as in the latest configuration, since 2005.

Table 11 – Total annual obligations for main terrestrial, total hours per year, 2009

	FT 1	France 2	France 3	France 4	France 5	M6
Children (hpy)	1,050	-	-	-	-	-
News (hpy)	800	-	-	-	-	-
French or EU original AV productions (hpy)	120	120	120	120	120	162
French audiovisual (hpy)	66	-	-	-	-	-
Arts & music (hpy)	22	40	40	40	40	(*)
TOTAL	2,058	160	160	160	160	162

Note: (*) Music obligations are expressed in % of total broadcasting time (a minimum of 24% of the total time, whilst a minimum of 50% shall be of French origin). Hpy = hours per year.

Source: See Annex 8, Tables 64 to 67.

The absence of more detailed specific content quotas, such as current affairs, education or regional news, indicates that the related socio-cultural objectives are not strongly emphasised by regulation in the French case. Instead, a concern with the nationality of the content and with the promotion of the arts is more prominent. That latter aspect of the content obligations will become clearer later on in this section. For the moment, it is important to highlight that Table 11 demonstrates that, conversely to the British case where the biggest content obligations are applied to the PSB (the BBC), in France the main commercial channel (and prior to privatisation the main PSB channel), TF1, has the highest and most detailed obligations. This practice indicates that despite the French government having privatised the main PSB channel in the 1980s, the government regulates it more tightly. In that sense, TF1 is comparable to Channel 5 in Britain: both are the focus of tighter regulation. Publicly owned France Televisions receives fewer specific programme obligations, as is the case of Channel 4 in the UK, also a publicly owned channel. Figure 10 shows how the total quotas expressed in hours per year (Table 11) changed through time.

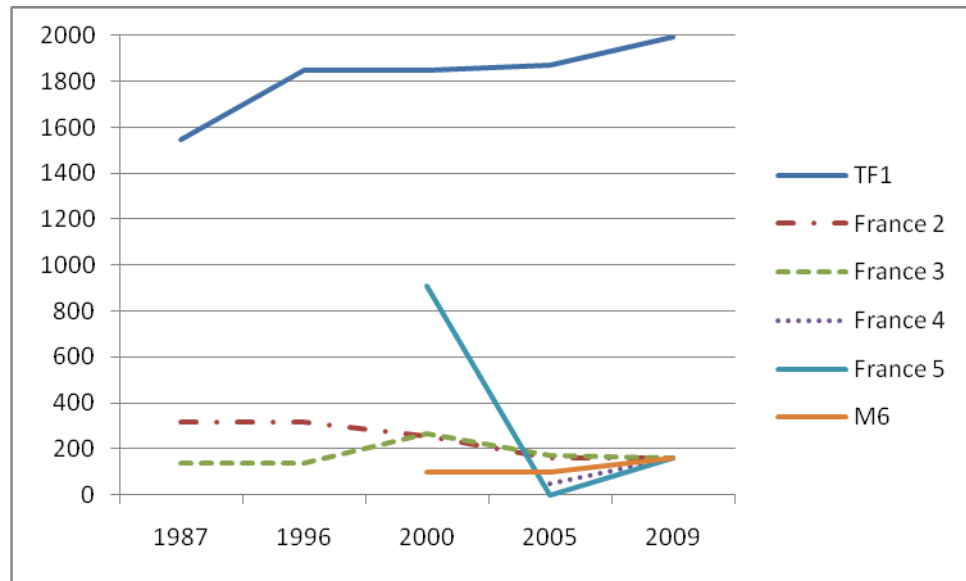


Figure 10 – Total hours of quotas per year of French main terrestrial channels

Source: Annex 8, Tables 64 to 67.

Figure 10 illustrates that the specific content obligations on TF1 have consistently increased over time, while at the same time the total quotas on France Televisions' channels remained steady or even decreased. It is important to note at this point that the decrease might be related to the fact that although France Televisions had to provide for more channels, there was no agreed raise on the value of the *TV license*.¹³⁴ The PSB had to provide for more services relying on an increase in revenues from advertisement.

The sharp drop in the obligations of France 5 between 2000 and 2005 shown in Figure 10 is due to a rearrangement that took place under digitalisation. Up to that year, in the analogue mode, the channel had to broadcast 910 hours of children and teenage (*jeunesse*) programmes (see Annex 8, Table 64 for details), and the same channel was used for half of each day by the channel Arte. With digitalisation and the launch of France 4, the channel is now focused on documentaries and TV magazines (CSA, 2006e). Additionally, while France 5 was dissociated from Arte in the digital mode, the channel was also released from children and teenager obligations. The task instead was given to France 4 but re-focusing on younger adults for the "renewal of the interest on public television" (CSA, 2006d).

¹³⁴ In fact the *TV license* was maintained constant between 2002 and 2008 in €116 (Martin-Laland, 2008: 10).

Contrary to the British case where quotas for the BBC were sharply increased after 2005, in France, the obligations for each of the public channels did not rise. Instead, there was only the inclusion of obligations for France 4 and 5. Thus, overall, the obligations of the public channels were slightly increased without, possibly, major effects on the schedules of the main channels France 2 and 3. Another characteristic clearly identifiable from the graph is that all channels, excluding TF1, converged to the same level of total quotas obligations. In fact, currently, the only quotas in terms of hours are the obligations to broadcast French or European original content and music or art. Confirming that supporting role for the arts, there is an additional quota for PSBs to broadcast a minimum of 18 cultural spectacles per year (see Annex 8, Tables 64 to 67). In addition, channel M6 has music specific obligations, such as a quota for promoting new talents and for producing video clips (see Annex 8, Table 67). In summary, these quota suggest that regulators do not have a primary focus on supporting some of the socio-cultural goals of broadcasting such as diversity, democracy (PSB have no news obligation at all) and citizenship. French quotas are focused on supporting the arts and with it French culture, but most significantly in financing production, particularly films. Another main concern present in French policy regards to the nationality of the content.

Since the 1980s French legislation has provisions with regards to, both, French and European content. The Decree 90-66 initially set that obligation as 50% (and at least 60% of European content), later reduced to 40% (and at least the majority of European content), probably as a rearrangement due to the enactment of the TWF Directive (FoCA as consolidated in 1994, Art. 27.2 and Decree 90-66, Arts. 5 and 8). These quotas explicitly include films (again a strong protection of the national film industry) and television programmes, including musical clips from French authors, as in the already mentioned case of the originally music-specialised M6 channel.

The fostering of national films is, in fact, not only restricted to establishing minimum percentages to be followed or to diverting revenues from broadcasters. Regulation also dictates the maximum number of films that can be exhibited on television. Canal Plus is limited to 500 films per year, while the others to a maximum of 192 films (see Annex 8, Tables 64 to 67). However, the films cannot be broadcast on Wednesday and Friday evenings, anytime on Saturdays, or on Sundays before 20.30

(Decree 90-66, Art. 10). According to these dispositions, French regulators protect cinema theatres, reserving days where television cannot compete with cinema, even in an era of multi-channel (besides indicating which are the days French citizens should go out!). Not surprisingly, French football competitions usually take place on Wednesdays (French Cup) and Saturdays (Championship).

It is worth mentioning that French regulation not only secures 'no-film' days on television but also assures that a proper proportion of national films hit the theatre screens. As discussed in Chapter 3, while the UK dropped the screen quota obligation during Thatcher's reforms, France maintains the policy without, actually enforcing it. According to Lee (2009), the latest French screen quota is situated between 112 and 140 days per screen.¹³⁵

According to Hayward (2005: 50) the vitality (and concentration) of the current French cinema industry is anchored in two main tools: quotas and subsidies. However, according to Lee (2009), the screen quotas are not currently being enforced. One of the reasons for this attitude might be a perception, by some, of a lack of effectiveness of that tool. The head of the CNC recognised that instead of screen quotas, agreements with cinema operators with regards to the diversity of screened films as introduced in France (such as the maximum number of screens that can exhibit the same film) proved to be more effective (Garandeau, 2011b).¹³⁶ Ulf-Moller (2001: xxii) more emphatically notes, screen quotas may be "deceptive, as they are based on the false assumption that all films have equal attendance." Sharper is the conclusion offered by Morrison and Compagnon (2010: 68) which argue that the French system created a protected market, with clientelistic practices and generating a large army of elitist, Paris-centric and self perpetuating cultural bureaucrats. However, screen quotas might be regarded as having an important role just by assuring a minimum space for national content, as they oblige cinema distributors to at least include in their yearly offerings some national works. I will return to that benefit when discussing the Brazilian case. While the screen quota guarantees a minimum availability of national products, it might have a similar impact as the broadcasting quota: no obligation will guarantee a viewer but if

¹³⁵ In fact the Decree 53-1294, last modified in 1964, stipulates that French films shall be screened at least during five weeks per trimester (three months), which corresponds to the figures reported by Lee.

¹³⁶ Those agreements are foreseen in the Decree 2010-781 which stipulates that cinema operators have to submit the yearly plan to the CNC guaranteeing a "diversity of works[.]"

there is no domestically produced content available, then there is no national content as an option for viewers.

7.7.3 The Brazilian-quasi-absent content obligations

As already discussed in Chapters 5 and 6 the Brazilian approach towards broadcasting is effectively *laissez-faire*, as the minimal quotas in place are widely acknowledged as being hardly ever actually complied with. In addition, as all commercial channels are subjected to the same legal quotas and there are no additional conditions set on broadcasters' licenses, regulators do not seek to regulate for diversity or complementarities between the different FTA channels.

As noted in Chapter 7, the minimum legal obligations for all channels are 5% of news programmes (Broadcasting Code 1962, Art 38.g) and five hours per week (equivalent to 260 hours per year) of educational programmes (Decree-Act 1967, Art. 16). The only channel that has specific content obligations is the federal PSB, TV Brasil, which has to broadcast 10% of regional programmes and 5% of independent productions (PSB Act 2008, Art.8.IV).

In principle the legislative obligations may seem, surprisingly, even higher than the ones set for France in some cases, as the European country does not have, for instance, specific educational or news quotas on some of their main terrestrials. Additionally, the educational quota is higher than for some of the British main terrestrials. However, the fundamental difference between the countries lies in the compliance. There is a common perception that these educational quotas are generally ignored (Lima, 2010). Brazilian broadcasters are not listed companies and hence do not have any obligation to publish reports on their accounts and programme policies. Nevertheless, in order to offer evidence on the perceived non-compliance, an analysis of the weekly TV listings has been carried out. Table 12 shows the total hours of broadcasting of the different kind of programmes during a normal one week period.

Table 12 – Total amount of different types of programmes broadcast by Brazilian main terrestrials in the city of Sao Paulo in a one week period, during 2009 (Hours : Minutes)

Broadcaster	Educational (minimum 5:00 obligation)	News (minimum 7:00 obligation)	Children (*)	Sports (*)	Religion (*)	Current Affairs (*)
Globo	06:30	27:32	15:25	13:40	00:35	02:35
Record	00:00	35:20	11:40	01:30	00:00	02:35
SBT	00:00	14:00	56:30	01:30	00:00	00:55
Band	00:00	38:10	00:00	16:30	05:00	03:25
TV Brasil	20:42	11:50	31:35	02:30	02:45	13:25

Note: Totals calculated from analysis of weekly TV listings in the city of Sao Paulo as published by blogs. Period used for Globo was 08/08-14/08/2009; Record and SBT 31/08-06/09/2009; Band 07/09-13/09/2009; TV Brasil 03/05-09/05/2009. (*) – No legal obligation.

Source: (_____, 2009a, 2009b, 2009c, 2009d, 2009e)

The figures in Table 12 corroborate the general idea that broadcasters, with the exception of Rede Globo and TV Brasil, do not comply with educational quotas. The 5% news quota should result in at least one hour per day or seven hours per week of news programmes (considering a minimum of 20 hours of daily broadcasting time). This obligation is accomplished by all broadcasters. Table 12 also show the different socio-cultural focus of the broadcasting channels. SBT and TV Brasil both promote children and family programmes. However, the analysis of the listings has also shown that whilst SBT relies on imported cartoons, such as *Tom & Jerry* (MGM) and *Justice League* (Warner), and children's soaps like *Chavo del Ocho* (Televisa), TV Brasil relies on national content, some of it generated by public broadcasters with educational objectives, such as *Castelo Ra-tim-bum* (TV Cultura) and *Um menino muito maluquinho* (TVE).

The other specific content identified in those listings are current affairs and religion. Interestingly, Record, owned by a Pentecostal group, as mentioned in Chapter 5, does not broadcast religious programmes but Band, not owned by religious groups, does. This difference might be explained by the assumption that for a religious group to use a public service for the promotion of its own interests and points of view could be contentious. Besides, a widespread broadcast of those programmes could result in labelling the network with a certain religious philosophy, which could be negative for attracting certain advertisers and audiences. Band network, on the other hand, as it does not have any apparent religious attachment, is free to open its schedules to different congregations which, in practice, results in leasing slots instead of relying on advertisements.

As a final comment on the practices of the main terrestrials, the analysis of the weekly TV listings corroborated the general impression that commercial broadcasters rely heavily on entertainment. In general, countries do not adopt quotas for this kind of content as those programmes are developed because they naturally appeal to audiences. *Telenovelas*, perhaps the most well-known characteristic of Brazilian television, are highly culturally relevant for Brazilian audiences. As the most watched content in that country they will come into sight in Chapter 8, when audiences' preferences are analysed.

Although establishing the types of content scheduled could be easily done by self-declaratory reports to be checked by authorities (as happens in the UK and France), content obligations or scheduling practices do not seem to be a matter of concern for the Ministry of Communications or any other authority. Apart from the protection of minors, currently supervised by the Ministry of Justice, commercial broadcasters may operate virtually free of obligations and restrictions. They are even allowed to, in practice, lease slots. That practice could be interpreted as a 'sub-licensing' of an original license and could lead to legal actions or the imposition of fines. However, to introduce any kind of control over broadcasting is extremely contentious in Brazil. For instance, when the government under the presidency of Lula proposed the creation of the Ancinav (a regulatory agency that would be equivalent to a combination of the French CSA and CNC), in 2004, the proposal was openly criticized by media groups, especially Rede Globo (Fernandes, 2010; Ramos & Haje, 2011). The proposal was said to amount to a re-introduction of censorship.

With the enactment of the PA 2011 and the introduction of quotas on paytv, the cinema agency, Ancine, was included in the audiovisual regulatory sphere. According to the dispositions of this latest Act, content-related regulation is shared between the Ministry of Communications (overall licenses compliance), the Ministry of Justice (protection of minors) and Ancine (responsible for the promotion of national content). The discussion about the promotion of national content on paytv services was a major point of controversy for the introduction of that law. After four years of negotiations, the Brazilian PA 2011 established that a mere 3.5 hours per week of "qualified content" shall be produced in the country and half of this by independent producers (Art. 16). By

'qualified content' Brazilian regulators used a similar criteria to that used in the European directive, i.e. excluding content such as news, sports and advertisements. Translated into percentages, that national content obligation represents only a small 2% quota. Far smaller than the European obligation, which sets out that "where practicable... broadcasters reserve for European works a majority proportion of their transmission time" (European Parliament, 2007: Art. 4). Although the Brazilian quota might be considered by some as almost irrelevant, it might also be considered as a policy breakthrough in directing broadcasting services, which could be passed on to the FTA service in the near future.

A second significant advance of the PA 2011 is the creation of a quota for Brazilian channels in all paytv offers. By that rule, a minimum of twelve channels must be owned by Brazilian nationals (Art. 17).¹³⁷ At the same time that this channel quota creates a demand for more Brazilian broadcasters, the disposition also dictates that at least two of those channels have to be independent from FTA broadcasters and broadcast at least 50% of Brazilian content. That latter rule gives an exact point for comparison with the AVMS directive. While the European 'where practicable' rule is applied to at least 'all main terrestrial channels', the Brazilian content rule applies only to two channels and is valid for paytv services only. These two approaches give us two different angles of observation. European traditional terrestrials (and the associated digital channels of the PSBs) broadcast a majority of European content possibly due to regulation, and Brazilian broadcasters do not have to comply with any national content quotas. On the other hand, European channels broadcast by paytv systems are freed from that regulation, while Brazilian regulation dictates that at least two of these channels must have a majority of national content. The impact on viewers of regulating only two paytv channels in the middle of hundreds of others could be insignificant and certainly, it would be more effective to regulate the main terrestrials, the most viewed channels. However, the policy can also be regarded as enabling a minimum distribution outlet for national content in paytv systems.

Although the main terrestrials are not obliged to include national content in their schedules, it does not imply that viewers of FTA services do not have access to Brazilian content. Commercial

¹³⁷ Actually the rule mandates that one third of the channels must be nationally owned, but it also included a maximum cap on the obligation of twelve channels.

broadcasters of that country do promote national content substantially, as the next chapter will show. As a quick note, according to Conversani and Botoso (2009), in the 1982-1997 period, 37% of the miniseries exhibited by FTA broadcasters were based on Brazilian novels. Rede Globo alone, in the 1984-2003 period, produced 31 miniseries, 28 of them based on Brazilian authors (Brasil Junior et al., 2004). However, the lack of legally enforced financial contributions (as in France) or of strong independent quotas (as in the UK) produced a heavily concentrated production industry centred on commercial broadcasters, as will be shown in the following chapter. In addition, this lack of regulation in a (paradoxically in this case) licensed service may also have consequences on a low commitment towards fulfilling socio-cultural objectives of broadcasting services.

The quota analysis has shown an increasing concern with securing distribution windows for national and independently produced television programmes and films, although Brazilian regulators do not actively promote media plurality in the production activities. For the particular case of films, at this point it is important to remind the reader that Brazil, like France, still adopts screen quotas (for cinemas), although substantially reduced in recent years. Despite the quota being reduced to one fifth in 2009, and the fact that only two national films per year are required to be exhibited, two years after those new levels were put in place, 41% of the cinemas audited by Ancine, almost half the exhibitors, failed to comply with the quota (Ancine, 2011c: 1). Brazilian cinema exhibitors do not even include at least two films in their yearly exhibitions and there is a general perception that it is extremely difficult for national films to stay on screen for more than one week. As Brazilian production by far exceeds two films, as Chapter 8 will show, it is either the case of a weak regulator or an inadequate regulatory framework. As in the case of the British Channel 5, when content regulations were eased, Brazilian cinemas' failure is another example of a regulation that has no force to change deeply rooted commercial practices.

The film maker Paulo Thiago (cited in Nagib & Rosa, 2002: 480-1) attributes the lack of presence of national films on cinema screens to insufficient investment in media distribution campaigns. Moreover, the director claims that screen quotas alone are inefficient to break the distribution bottleneck imposed by international distributors operating in the country with significant market

power. With a complete opposite point of view, the Brazilian association of cinema multiplex operators claims that there are simply not enough attractive films to comply with the quota, as 75% of the films produced are low budget and based on authorial concepts incapable of attracting mass audiences (Abraplex, 2005). As such, the association regards the screen quotas as “a harmful futurology-exercise imposed to the market” by a “demagogic threat” which “violates basic principles as the unambiguous relationship between supply and demand.”¹³⁸

The reality is that in Brazil there are no national equivalents in size and wealth to the French distributors (and studios) *UCG*, *Gaumont* or *Pathe* which could force the inclusion of Brazilian films within their catalogues. *Globo Filmes* could be regarded as the exception to this rule. In fact, as remarked by Fonseca (2003), Rede Globo’s films arm was responsible for 80% of the cinema tickets for Brazilian films in 2003. The Brazilian case clearly shows that the French diversity regulation for cinema screens, highlighted earlier on, would be necessary in that country. At this point it is important to remind the reader that, although an evaluation of the cinema distribution activity could offer important findings for this research, for practical reasons that activity will not be covered. That investigation and its relationship with the fostering of national content is another field for possible further research.

As with the other quotas, to establish a proper number of national films to be shown on the big screen seems to be a difficult task. While screen quotas might be ‘deceptive’, as regarded by Ulf-Moller, or inefficient, the Brazilian case shows that national films simply do not reach the screen if not actively promoted and quotas are not actively enforced.

7.7.4 Quotas for non-linear (VOD) services

The appearance and increasing popularisation of the new non-linear modes of distribution of content, such as VOD or IPTV (as mentioned in Chapter 2) arouse the attention of legislators in all countries studied. At the European level, during the 2007 revision of the TWF, then re-baptised AVMS Directive, non-linear services were included in its scope. However, as the new Directive

¹³⁸ Original quote: “Um danoso exercício de futurologia imposto anualmente ao mercado”, “demagógica ameaça” and “viola princípios básicos como a insofismável relação entre oferta e procura.”

exempts those services from a mandatory quota obligation, Member States deal with the matter differently (Schneider & Bossche, 2008: 257).

At this point it is important to remark that a quota on non-linear services would be ineffective as users could always skip or avoid the content promoted by the quota. A quota, if imposed over a catalogue, could be ineffective, as it would suffer from the same kind of limitations of the cinema screen quotas. Some content could just be ignored by users. In traditional and linear television (without the advent of the PVRs)¹³⁹ it may be argued that there is no possibility of skipping the content, only swapping to a different channel offering imported content or, even, switching the television off.

With regards to our two European case studies, the UK decided to minimally regulate non-linear services without specifying a quota (De Vinck & Pauwels, 2008: 284; UK, 2009). British obligations relate only to harmful material, advertising, sponsorship and product placement (CA 2003, s368A to s368R). The BBC, however, agreed to include the 25% independent production quota in their *iPlayer*, the BBC on-line service (see Table 60). France, on the other hand, included a levy on these services, which is directed to their audiovisual fund Cosip (CSA, 2009c: 21). In addition, the CNC, as already commented earlier on in this chapter, have specific financing schemes for the development of innovative formats and distribution technologies. As there are specific legal contributions and public programmes for these new services, the potentialities of the internet and of digital convergence for the production of national content seem to be more deeply incorporated into the French policy.

In the Brazilian case, as already noted in Chapter 6, since the PSB Act 2008, the public broadcaster has the obligation to develop interactive content for the internet. However, the regulation of the new media was not further embraced for the other services. Similar to the British case, Brazil with the PA 2011 also exempted non-linear paytv services from national quota obligations (Art. 19.vi).

¹³⁹ Personal Video Recorder, a set-top box with recording capabilities.

These 'light touch' approaches are in agreement with regulatory stakeholders' tendencies, at least in the EU, of regulating more strictly core broadcasters than marginal services (Storsul & Syvertsen, 2007). The loose obligations, or even a regulatory forbearance (when governments refrain to impose rules on specific markets), are often regarded as necessary in order to encourage investment and innovation in new technologies and services, as is the case with non-linear services (Boyfield, 2006: 11). It seems that as long as those services are still developing and have, in comparison to linear services, less attention from users, they will continue to be exempted from quotas. The market analysis of the next chapter, while showing the take-up of those services, will clarify where they are positioned in the current broadcasting space. Additionally, the next step should also indicate how important the phenomenon of digital convergence is for the distribution and access of national content.

7.8 Conclusions

Throughout the analysis of the case studies, I have shown the differences and similarities in each of the broadcasting legislations of the countries under study. While Chapter 6 analysed how the legislation shaped the socio-cultural objectives of broadcasting, this chapter has focused on the regulatory framework used for sustaining those goals and the production and distribution of national content, the 'push-pull' policies.

The tools regulating the relationships between the audiovisual industries showed different tendencies among the case studies. More related to sustaining diversity, citizenry and democracy, the European countries have a greater concern with the access and coverage of FTA broadcasters. In Brazil, policymakers favoured broadcasters in the digitalisation process not requiring specific investment for these issues. Ownership tools which relate to plurality and cultural relevance also received different treatment. Britain has a liberalised approach towards foreign ownership, whilst France and Brazil hold more explicit restrictions.

The increasing importance of regulating the commercial relations between the holders of broadcasting rights to 'listed events' and broadcasters also varied between countries. Britain opted

for a more liberal approach, where the regulator can decide which events should be more closely regulated and allowed for more events to be broadcasted with exclusivity. Conversely, France prevented more events to be offered only on paytv services and listed those by Decree. Brazil opted for a *laissez-faire* approach and that content is monopolised by Rede Globo, although with signs of loosening uncontested dominance. A second matter concerning the regulation of broadcasting rights is the relationship between producers and broadcasters. The UK is regarded as having implemented regulation that has boosted their independent production.

The regulatory tool used for the assessment of the nationality of content showed a tendency to consider the production of content mostly as a matter of economic activity. During this analysis I highlighted the fact that in order to sustain the socio-cultural objectives of broadcasting and of cultural industries overall, the definition of what constitutes national content should be more balanced between socio-cultural values and the industrial aspects of content production.

In relation to the funding available for national content, the research has shown that all three countries have a comprehensive set of financing schemes ('pull' policies). Some differences may be extracted though. The production industries of the UK and France mainly rely on broadcasters' commissioning. However, in France there is also a tax on broadcasting and telecommunication services which provides a 'structured financing system' for the production of content. That taxation and the mandatory *contributions* (working as a minimum obligatory commissioning) result in broadcasters subsidising the film industry. In the same vein as in the French system, Brazil also uses public subsidies for the production of national content. Nevertheless, the timid incentives, and the lack of independent production quotas for commercial broadcasters, leave the Brazilian audiovisual industry too concentrated on the main networks. It is important to stress, as the other examples have shown, that to design a regulatory framework for the production of national content, excluding financial contributions or commissioning demands from commercial broadcasters, as is the Brazilian case, will deprive the system of its potential biggest contributors.

With regards to quota, of the three countries studied, the UK may be regarded as the most 'dirigiste'. On the other hand, in France there are stronger specific obligations towards arts and

films. As a result of the French approach, not only are films substantially funded by public subsidies they are also assured substantial distribution opportunities.

This chapter has also shown that France has the biggest concern with regards to the origin of the content. At least 60% of films and television programmes shown on television have to be European and 40% French. Britain, on the contrary, does not adopt any nationality restriction besides the TWF/AVMS rule that obliges a majority of European content. The independent production quota also shows differences. France opted for a 10% expenditure of the programming costs while Britain, instead, opted for a 25% quota in terms of hours. As a result, in the UK, not only do considerable resources go from broadcasters to independent producers, but also a high proportion of the content is produced beyond broadcasters' 'arms'.

Brazil, in a different approach, mainly because of the political power of commercial broadcasters, has 'light' content obligations or quotas, which moreover are not enforced. However, the significant use of own-produced domestic productions - especially telenovelas, news and football - could be regarded as a negative blow for those advocates of national quota policies. This case proves that national content can be produced without the aid of quotas. Having a strong national group in FTA - at the expense of pluralism - as is the case of Rede Globo, it seems, can suffice to generate national content.

Finally, in times of multi-channel television and increasing popularity of paytv systems, the regulation for the promotion of national content still extends to the theatre distribution window. In France this protection is carefully designed, evidencing a high inter-dependency between the film and television industries (and even football with regards to cinema going). This matter might also be regarded as controversial, as Jackel (1999: 181) also highlighted, as it is debatable whether screen quotas have a steering impact on film production.

The next chapter will conclude the three-step analysis designed to identify the key aspects for the promotion of national content. The first two steps have scrutinized the socio-cultural objectives of communication services and the corresponding regulatory tools. The next chapter will perform the

third and last step of this research, the market analysis. That investigation will help to identify which legislative tools appear to be more successful in supporting the production of national content and indicate the effectiveness of including socio-cultural objectives for broadcasting services.

CHAPTER VIII

STEP 3: NATIONAL CONTENT MARKET ASSESSMENT

Just as water, gas and electricity are brought into our houses from far off to satisfy our needs in response to a minimal effort, so we shall be supplied with visual or auditory images, which will appear and disappear at a simple movement of the hand, hardly more than a sign...I don't know if a philosopher has ever dreamed of a company engaged in the home delivery of Sensory Reality.

*Paul Valery in "The Conquest of Ubiquity", 1928
(cited in: Friedberg, 2004: 337)*

8.1 Introduction

This chapter completes the three step approach devised for evaluating how the production and distribution of national content is affected by legislation in the digital era. The first step of this research evaluated how the socio-cultural objectives were addressed in regulation. Together with the second step, the analysis of the regulatory tools, the research showed which goals regulators emphasize and prioritise in each country's audiovisual legislation and how they shape the broadcasting services overall. Additionally, the second step closely scrutinised the specific content obligations, giving some evidence on how and where the production of national content is directed by regulators. In this last step, performing a market evaluation, I will reveal the effects of these regulations on the different segments involved with the production and distribution of national content. Key data on the film and independent television production, broadcasters and distribution activities will be analysed. In addition to the research on these activities, this step will also evaluate how the behaviours and preferences of audiences have changed after liberalisation, digitalisation and the, possibly promoted by regulators, emergence of digital convergence.

Moving on to the outline of this chapter, sections 8.2 and 8.3 will focus on the film industry and independent producers. Completing the activities involved with the production of national content, in section 8.4 I will examine national broadcasters, the biggest financers and producers of programmes. Broadcasters, as will be seen in that section, have more potential to be affected by liberalisation (through the introduction of more channels), digitalisation (again through a massive multiplication of channels) and digital convergence (through the inclusion of the telecommunication operators and information technology companies as direct competitors) than the other producers. The broadcasters' analysis will detail the global picture and analyse how the main terrestrials of each country are situated in comparison with the global media players and, with digital convergence, with the companies from the neighbouring and newly overlapping sector of telecommunication. Because of limitations of time and space, the information technologies' industries will only be assessed topically.

After having analysed the main suppliers and distributors of audiovisual content as well as the newcomers enabled by digital convergence, section 8.5 will investigate the possibilities of further growth for the different media services and how communication services in each country could develop in the near future and hence where media policy should go.

Finally, the third step will look into one of the main reasons for the very existence of regulation: audiences. Using secondary sources, section 8.6 will explore audience figures and viewing habits and suggest that, even in times of digitalisation and the resulting enhanced offers, content produced nationally is still highly attractive. With those findings the research offers some valuable justification for the maintenance and improvement of policies for the promotion of national content.

On a final note, as the reader will notice, throughout this chapter the periods of analysis and the sources used vary between countries. This is due to the unavoidable differences in the years covered by the different sources used for this analysis (see Chapter 4 for a detailed explanation on the methodology and selection of sources used for this step).

8.2 *Film production*

The economic power of the film industry is widely recognised by policymakers, scholars and economists. The institute Oxford Economics (2007: 32) estimates that “[t]he core UK film industry contributes overall around £3 billion a year to UK GDP, taking into account direct, indirect and induced impacts – equivalent to 0.3% of UK GDP” and “helps to support 67,000 [full-time equivalent] jobs.” Obviously, as with any other industry, the film industry induces job creation in other sectors of the economy. For instance, the film industry has a capacity to generate revenues in the computer industries, with computer-generated imagery, or in the tourist industry with the creation of new film-tourism circuits. Most probably, the bigger the production sector, the bigger the activity and contribution towards the national economy (for details on the economic implications of the film industry see Avery & Holmlund, 2010: 26-9; Henry, 2007: 89-92; OECD, 2008: 80-5; Oxford Economics, 2007).

A comprehensive economic assessment of the film industry should include the analysis of several activities such as job creation, training, ticket-office performance, exhibitors’ practices, distribution companies, merchandise and much more. However, for practical reasons, I will not enter into the details of all direct and indirect activities impacted by film productions. Because films are an important ingredient of broadcasting schedules, as will be seen later on during this chapter, and depend on broadcasting for their financing, as seen in the previous chapter, I will limit my analysis to the most obvious interface with this thesis, which is the production of films.

Figure 11 shows the total number of films produced from 1987 to 2010 in the selected countries. In the case of the UK, the graph shows two different stats because the BFI tracks all British productions excluding co-productions, while the UKFC is concentrated on films that used public funds, including co-productions. The figures are not accurate though, as these numbers are revisited by newer compilations. Therefore, the total numbers sometimes slightly change within the same agency depending on the year of the report used.

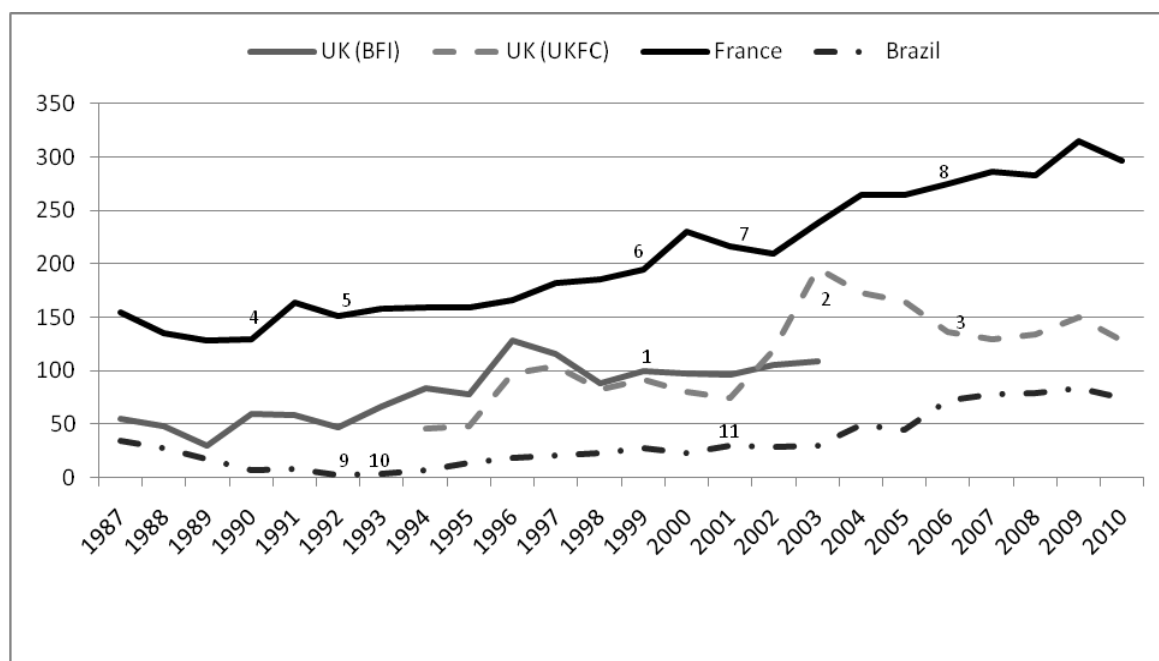


Figure 11 – Total films produced per year

Source: (Ancine, 2010a; BFI, 2006: 342; 2011: 146; CNC, 2011c; Earp & Sroulevich, 2009)

Notes:

- **UK:**
 - (1) amendment in the Film Act 1985, mandating that the majority of the production costs should be spent in Britain regardless the film's location;
 - (2) sale & leaseback peak;
 - (3) introduction of the Finance Act 2006 and the cultural test.
- **France:**
 - (4) Plan Lang and the introduction of the Decree 90-66, setting proportion of workforce and national and EU quotas;
 - (5) introduction of the cultural test;
 - (6) enactment of the Decree 99-130 introducing selective & automatic financing for film production;
 - (7) enactment of the financing Decrees establishing television contributions towards film and audiovisual production;
 - (8) amendments of the levels of the contributions of the financing Decrees.
- **Brazil:**
 - (9) extinction of the film agency Embrafilme;
 - (10) enactment of the Audiovisual Act;
 - (11) creation of the cinema agency Ancine.

The points marked on the preceding graph and detailed on the notes illustrate the regulatory milestones, discussed in the previous steps of this research. Before re-visiting these milestones, there is one important peak point that needs to be highlighted that cannot be related to changes in the legal instruments analysed but to a policy decision nevertheless. In the UK, in the 1996-1997 period, there was a peak in production due to a policy choice to use lottery funds for financing films through awards administered by the nation's arts councils. As remarked by Hjort and Mackenzie

(2000: 148-149), Kim (2003), Hill (2005: 228) and others, the funding was responsible for an upsurge of regional projects (with special success in the Scottish case). That trend was stopped with the launch of the UK Film Council and the amendment of the Film Act in 1999 (point 1 in the graph), which focused on tax benefits for those films which were produced (not necessarily filmed) in the UK. The second peak (2) was the reported misuse of the 'sale and leaseback' system.¹⁴⁰ The introduction of the cultural test (3) may be regarded as beneficial as the total production figures halted their declining curve. The last peak in 2009 is explained by a highest influx of inward productions, as noted by the *Guardian* (Mark Brown, 2010).¹⁴¹ This claim can be corroborated in the BFI Yearbook 2011, which shows an increase of ten more inward productions in that year (BFI, 2011: 146).

The French curve, in addition to showing the highest production of all three countries, shows an enviable continuity in growth in the period analysed. The major alterations in legislation (points 4 to 8) were responsible for bringing the production to new and higher levels, with curiously small spikes after the introduction of new schemes. The Plan Lang (4) certainly stopped a steady decline in production. The introduction of the selective and automatic financing (6) and the compulsory contributions from the television sector (7 and 8) increased French production levels even further. At least from these figures, the French solutions show irrefutable consistency and success.

The Brazilian case shows a very similar pattern to the French case although on a different scale. After the initial downturn, where the extinction of the film agency led to zero productions (point 9), production was somehow restored with the enactment of the Audiovisual Act 1993 (10) and its financing schemes. However, it was only with the start-up of the new cinema agency, Ancine (11), which brought Brazilian levels to more robust figures. Currently, Brazilian production doubles that of the pre-Ancine era.

At this point it is important to remark that the analysis of the total number of productions only tells half the story with regards to the strength of the film production industry. In order to have a more

¹⁴⁰ See Chapter 7 for details on that system.

¹⁴¹ Foreign productions attracted to be produced in the country. See note in Chapter 7 for a more detailed definition.

adequate economic picture of this particular industry, the total production costs need to be analysed too. Narrowing the gap to the last decade only, Figure 12 shows the total number of films produced and their corresponding production costs.

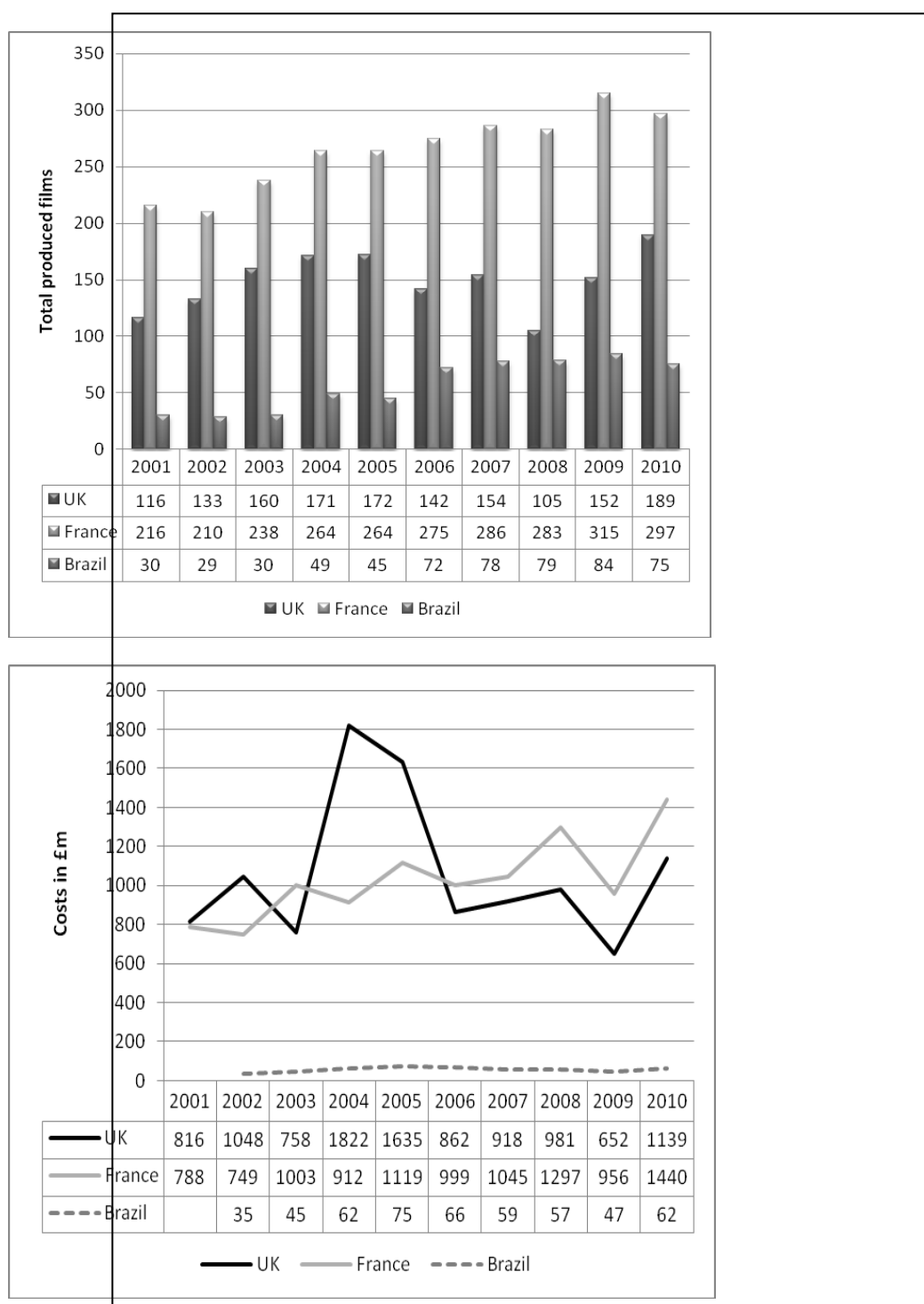


Figure 12 – Total films produced per year and total production costs (in million £)

Source: (Ancine, 2010a: 8; BFI, 2011: 138; CNC, 2011b: investiss; 2011c: visas)

Note: Total costs for Brazilian production are estimated from the amount of public resources given. Brazilian legislation allows the raising of funds, which are the figures monitored by the cinema agency, up to the proportion of 80% of the total cost of the project up to a ceiling. As the major part of Brazilian productions are of low budget, I considered for the total cost an increase of 20% on the totals monitored by the agency.

As already noted in the discussion of Figure 11, the graph at the top of Figure 12 clearly shows three different patterns. During the last decade, France has constantly increased its comparatively already high volume of works; Britain has a more erratic volume of production due to variations in

the numbers of the 'inward productions' and; Brazil has grown its volume more vigorously (an average increase of 15% per year over the decade, against 6% of the UK and 3% of France).

The analysis of the graph at the bottom of Figure 12 shows new interesting points for comparison though. The overall costs of Brazilian production are far smaller than those of the other two countries and this is also mirrored in the average costs per film as Figure 13 reveals. The Brazilian industry operates on a different scale compared to the European countries. This reflects the differences in the available amount of public funding, for the case of France, and foreign investments, in the case of Britain. The total production costs of French works have been increasing throughout the decade. This could indicate that the overall increase in the contributions from broadcasters and other telecommunication services towards audiovisual and film production, undoubtedly, supports the film production industry. On the other hand, Figure 13 indicates that as the average production cost has not increased significantly throughout the decade, public funds distribution is not an object of further concentration (the average production cost is approximately £4m). This contradicts suggestions of critics of the French system, who advocate that the system favours large productions only, as mentioned in Chapter 6.

Returning to the analysis of the graph at the bottom of Figure 12, the British sharp increase and drop between 2004 and 2006 corroborates with the claims of excessive usage and lack of control of the 'sale and leaseback' practices stopped by the Finance Act 2006. The second sharp decrease experienced by both the UK and France in 2009 may be a reflection of the 2008-2009 economic crisis, as the GDP of both countries suffered a sharp fall in 2009 (-4.9% and -2.7% respectively).¹⁴²

When discussing the total production values, it is also important to mention the exports achieved by national films. The disparities are substantial. While France and Britain have similar total production costs, the UK achieved almost ten times more revenues from exports in 2009. According to national reports, as a sign of an exporting policy orientation, the UK exported films with a value of £1.5 billion (BFI, 2011: 190) but France of only £121m (CNC, 2011a: 38). Unfortunately there is no film specific published data on Brazilian film exports. Nonetheless, the Ministry of Industry and

¹⁴² Data from the World Bank indicators available from Google Public Data Explorer (World Bank, 2011).

Commerce (MDIC) reports on foreign trade on cultural and recreational services, which include film and television services. In 2009, the MDIC (2010) reported a total of £50m for the country's foreign exports of those goods (I will return to this foreign trade figure later on in this chapter). Another estimate can be made from the plans made by the exports promotion agency Apex-Brasil. Being extremely optimistic, considering the lack of consistent cases of success of Brazilian film exports, the agency set a target of cinema exports of approximately £40m for 2011 (Apex-Brasil, 2010), a third of French export revenues.

The export performances do not indicate the reasons for the failures or successes of national films. However, the cultural discount factor mentioned in Chapter 2 certainly favours British films, produced in the global *lingua franca*. Moreover, the considerable number of inward productions should positively reflect on foreign trade results. The low exports of France indicate the difficulties of trading national products, even in cases where there is a well structured and strong national industry, which leads me to believe that it will be extremely difficult for Brazil to achieve considerable growth in exports in that activity in the near future.

If from one side the investments in productions do not necessarily translate into exports, film production costs may exert some influence on bringing audiences to the cinemas. Figure 13 illustrates the relation between production costs and audience.

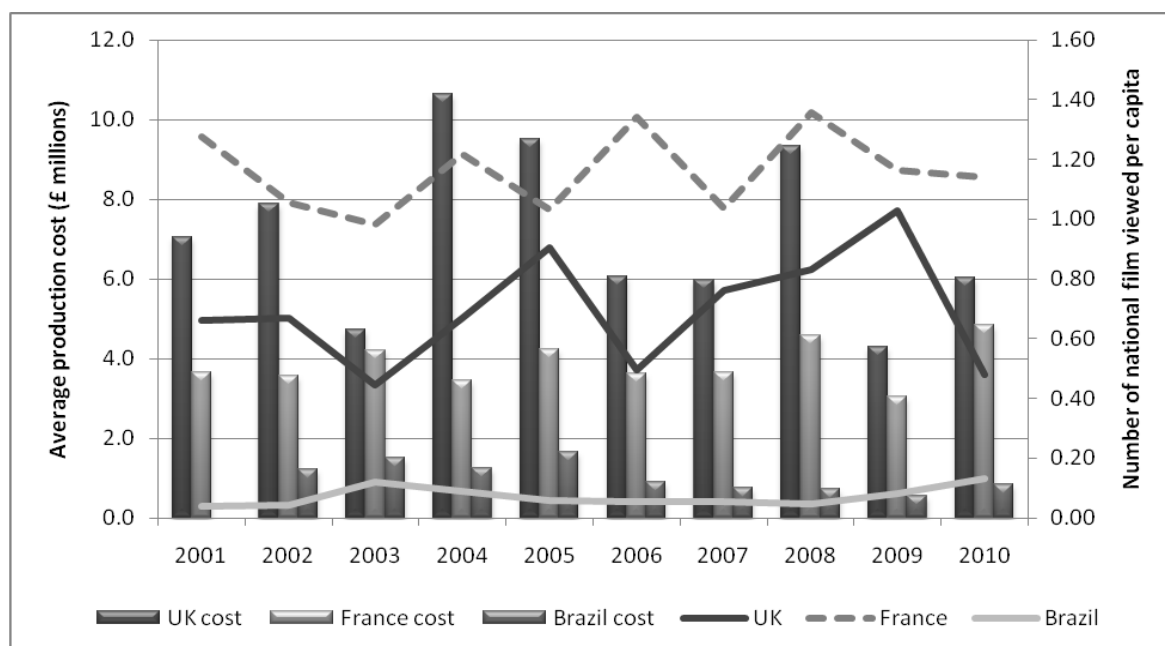


Figure 13 – National film average production cost (left) and number of national films viewed per capita at cinemas

Source: Annex 9, Table 83.

Figure 13 shows that consistently throughout the decade, UK productions have larger budgets than the French, despite the latter's existing comprehensive governmental funding. This may be due to 'inward productions', as acknowledged by the BFI's (2011: 145) report. In 2009, those films represented 75% of the production activity (ibid). Noteworthy is that despite the lower production costs, cinemagoers in France go more often to the cinema to watch national films (at least once a year) than those in Britain (less than once a year). That average suggests that French society benefits from those subsidies. Perhaps French films arouse more interest in national markets because they might be more culturally relevant than those produced for export. Alternatively, or in addition, the interest might also be due to the availability of more films to choose from. The Brazilian case shows both the lack of interest of American studios and a low public subsidy, as the production costs are far smaller than of the other cases. Still according to Figure 13 Brazilians also go less to the cinema to watch local productions. However, before drawing conclusions about the relative success, or cultural relevance, Figure 14, showing the market share of national productions in relation to the total number of films released in cinemas, has to be noted.

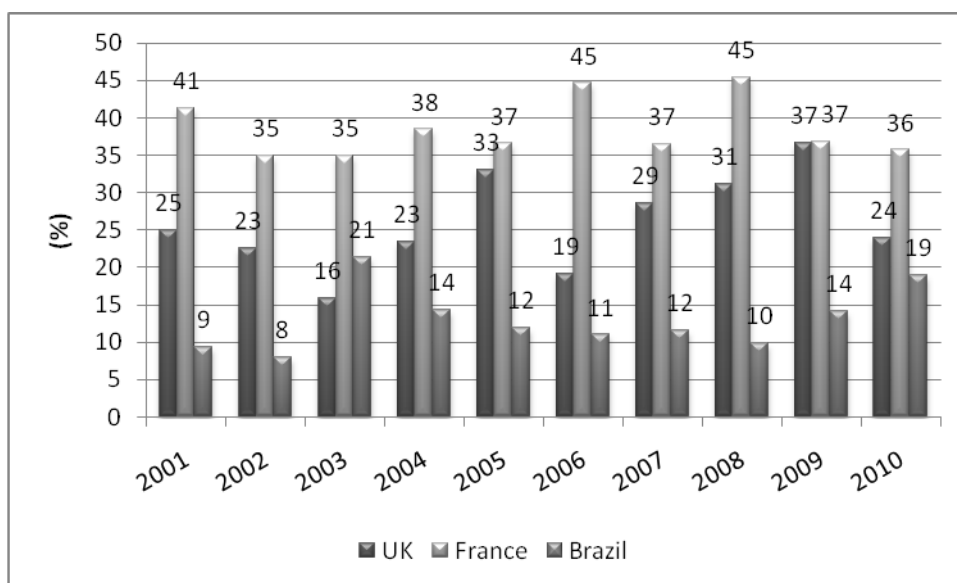


Figure 14 – National market share of national films (%)

Source: Annex 9, Table 83.

The French average for the decade (39%) is higher than the British (26%), which in turn is higher than the Brazilian share (13%). However, as Brazil produces far fewer films (see Figure 12) the impact of each Brazilian film in the market share is the highest of the three (0.2% against 0.13% per French film and 0.14% for the British ones). This analysis suggests that Brazilian productions, despite being small and poorly funded, attract the attention of Brazilian cinemagoers more, possibly because they are more culturally relevant than imported films or, alternatively, because being relatively rare they are particularly welcome.

This attraction of indigenous productions, as will also be noted when discussing television audiences' preferences, is also recognised by the already mentioned institution Oxford Economics. The institute suggests that (compared to imported films) "a film's office receipts in the UK will be 30% higher than otherwise would be the case given its general appeal if it is UK-made" (Oxford Economics, 2007: 51).

This section has shown how regulation impacted on the levels of film production. The three countries showed different results. The French 'structured financing system' appears consistent and supportive: both the number of productions and the overall resources involved are constantly growing. French figures have also shown that the average productions costs were maintained

relatively steadily, suggesting that in that country the regulatory setup does not favour big budget films only. Moreover, the analysis suggests that targeted regulation has a positive impact on production. The discussion has also shown that national films are attractive, and the fostering of film production cannot be solely regarded as industrial investments for producing wealth, jobs and cultural products that audiences are not interested in. As an additional benefit, the local production of films guarantees a continuous supply of national content to the ever increasing number of broadcasting channels, always eager for new content.

A second category of contributors to national content on television are the independent producers. The next section will analyse how changes in regulation have impacted on this sector.

8.3 The independent production sector

As already discussed in Chapters 5 to 7, the UK and France have long lasting European and national regulations supporting the independent production and distribution of national content. Brazil, on the other hand, is starting to follow this path. Just as a reminder to the reader, the quotas in the UK are 25% of the viewing time for the main terrestrials and 10% for the digital only channels; in France 10% of the total programme expenditure; and, in Brazil, 5% for the PSB and 1% for paytv channels. As a result of those differences in the scale of the regulatory obligations, the independent production sectors of the European countries are significantly wealthier. One of the consequences of that strength is that the British and French production sectors are more diverse and plural than the Brazilian sector, which is concentrated in the hands of commercial broadcasters. Nevertheless, Brazil is starting to experience some cases of independent producers being commercially successful and even exporting products, such as the animation cartoons *Princesas do Mar* (Sea Princesses), *Meu AmigãoZão* (My Big Big Friend) and *Peixonauta* (Fishtronaut) (Carneiro, 2011).

A closer look at a presentation given by the Brazilian independent TV producers' association (ABPI-TV) shows that the most representative association of that segment has just over one hundred companies as members (Dias, 2010). The association reports that 22 companies have

revenues between £350,000 and £1.75m and 21 over £1.75m. As there are no other widely reported statistics for evaluating that sector in Brazil, performing an average estimate, those numbers indicate that the total revenue of the activity will roughly top approximately £85 million in 2009.¹⁴³

An interesting comparison with Brazilian ABPI-TV figures can be done by analysing the French Sofica outcome. As explained in Chapter 7, the Sofica are companies specially set up for financing film and audiovisual production. While the associates of Brazilian ABPI-TV are production companies for television, the Sofica companies finance both film and television programmes. However, as a common characteristic they have to invest at least 50% in independent productions. Therefore a closer look at the investments of the Sofica companies will give us an indication of the size of French independent producers' activities. Data available from CNC indicates that in 2010, twelve Sofica were registered and invested £55m, of which £33m went to independent producers, resulting in 130 films and 24 television programmes (CNC, 2010a). Those total investments may suggest a similarity in sizes between France and Brazil. However, not all independent producers are associated with ABPI-TV nor is all independent production financed by Sofica schemes. A considerable number of independent productions in these countries are financed by governmental grants and also, in the case of France, by broadcasters' commissioning.

If from the private sector there is no comprehensive data available about the Brazilian independent sector, from the federal film agency Ancine, which administers the audiovisual sector fund (FSA) as explained in Chapter 7, the total amount of financial incentives given are publicised. During the three years of the fund's existence the investments were: £7.1m in 2008, £6.9m in 2009 and £19.6m in 2010 (Ancine, 2011a).¹⁴⁴ It is important to note that, most likely, the revenues of the independent sector, as informed by the already mentioned association, include within their figures the amount of public subsidy. Therefore, if it is estimated that the independent turnover in 2009

¹⁴³ Numbers are reported in Brazilian currency Real (R\$). Sixty four (64) companies are reported to have revenues lower than R\$ 1m. Twenty two (22) companies are reported with revenues between R\$ 1m and R\$5m and twenty one (21) above R\$ 5m. Considering an average income of £0.5m for the small companies, £3m for the medium sized, and £7m for the bigger companies, I estimated a total revenue of R\$ 245m (64x0.5+22x3+21x7=R\$ 245m, or £85m. Currency exchange rate used from Brazilian central bank, available at <http://www4.bcb.gov.br/pec/conversao/Resultado.asp?idpai=convmoeda>, accessed on 12/10/2011

¹⁴⁴ Original figures are reported in Brazilian currency (R\$ 24.5m in 2008, R\$19.7m in 2009 and R\$50.2m in 2010). Currency converted as mentioned in the previous footnote.

was approximately £85m, almost £7m of that amount may have been as a result of the public subsidy given by Ancine, through the FSA. Although the data available should only be considered as indicative, the amount (£85m) shows an enormous disparity with the one generated by national broadcasters in that country (£8 billion as will be seen later on in this chapter when discussing Table 13).

The weak results of the Brazilian independent sector may be regarded as a consequence of the small legal obligations for broadcasting independent content in Brazil. However, it has to be remarked that the new Paytv Act included a new contribution to the FSA fund, namely and mainly by a levy to the telecommunication providers. As reported in the proceedings of the bill, echoed by the press (Mazza, 2007) and by academics (Ramos & Haje, 2011), the levy will contribute approximately £110m per year to the fund to be used for the production of independent content. The CNC in France, in comparison, contributes nearly £160m per year towards the production of audiovisual content (CNC, 2011h).¹⁴⁵

Although these resources might be considered weak by some as they represent less than 2% of the revenues of commercial broadcasters, they will constitute unprecedented level of resources to Brazilian audiovisual industries. However, the independent content quota in terms of hourly output is far too small when compared to the British. There could be at least three possible outcomes to that situation. First, the independent sector could receive 'soft money' in excess leading to inefficient production as there is a small quota. Secondly, the production could be efficiently made but with no distribution opportunity because the quota is smaller than the amount of content produced. Finally, and probably most likely, part of these resources could be used for financing the federal budget elsewhere.¹⁴⁶

¹⁴⁵ According to CNC's figures the aid towards audiovisual production totalled €197m in 2008, €198m in 2009 and €197m in 2010.

¹⁴⁶ In fact the annual telecommunication inspection fees which are historically collected by the government and were partially diverted towards the audiovisual sector are repeatedly used for the purposes of financing the federal governmental budget and for generating primary surplus, as widely acknowledged by the press. According to the telecommunications providers' union, SindiTelebrasil, up to 90% of the fees are diverted from the telecommunication agency Anatel (Telebrasil, 2010). The association reports that, in 2009 the fees collected totalled R\$4.9 billion (£1.7 billion) and only R\$400m (£140m) were used by Anatel for the original purposes.

Alongside public subsidy, the main financiers of independent producers in the UK and in France are the broadcasters, by means of their direct commissioning. In the case of France, as detailed in Chapter 7, broadcasters have different contributions towards the financing of independently produced audiovisual content. The annual report from CSA states that the total investment by broadcasters in independent audiovisual production in 2009 (including the legal contributions) was £570m, of which, only £30m were added by other paytv chains apart from the ones related to TF1 and Canal Plus (CSA, 2009a:56, 62).¹⁴⁷

Fortunately for this research, data for the European countries is more widely available than in the Brazilian case. In order to situate the strength of French independent production sector, the European Audiovisual Observatory (EAO) yearbooks have valuable data, as Figure 15 shows.

¹⁴⁷ Figures in the report in Euros: €651m and €35m respectively. The amount derives from the obligations set by regulation, as detailed in Chapter 7, which currently dictates that France Televisions has to contribute 18% of its revenues, TF1 9.375% and Canal Plus 3.155% towards the production of independent content. Using data from the annual report, as France Televisions' revenues were €2.6 billion and had to contribute 18% towards independent production, its share would be €460m. Accordingly, TF1 contribution would be €130m (€1.4 billion x 9.4%) and Canal Plus €57m (€1.8 billion x 3.2%).

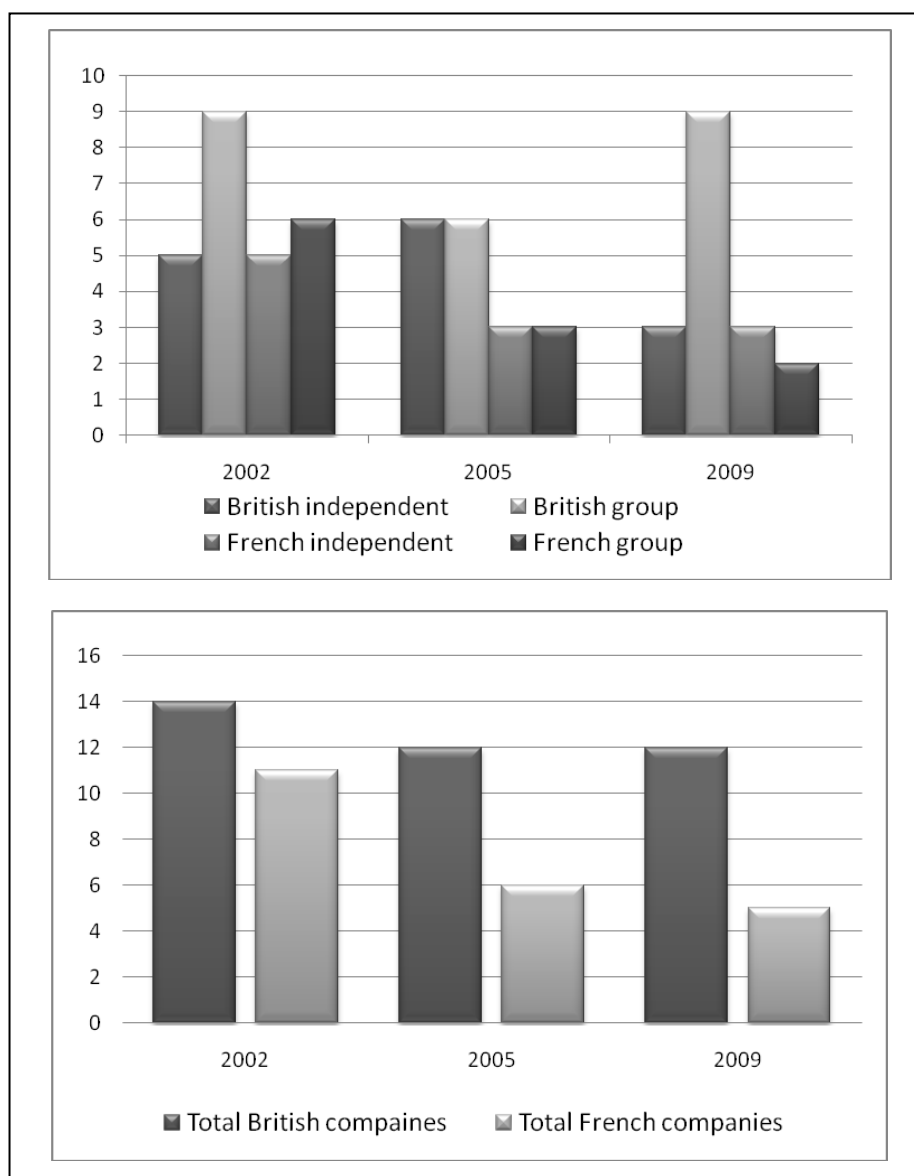


Figure 15 – Number of British and French production companies in the top 50 leading production companies in Europe according to the European Audiovisual Observatory (EAO)

Note: Top graph divided between independent producers and media groups (with other interests) and bottom graph shows those two categories added.

Source: (European Audiovisual Observatory, 2003: 114, T25.3; 2006: 114, T9.2; 2010: 226, T9.2).

The graph on the top of Figure 15 shows that despite the contributions from broadcasters and the other subsidies given by the CNC, there is a bigger presence of British companies among the leading production companies in Europe. Moreover, while the number of British companies is maintained the French share of leading companies is diminishing. The graph on the bottom of Figure 15 suggests that despite an initial increase in the number of British independent companies, from 2002 to 2005, as a possible outcome of the introduction of the CA 2003, these companies were either consolidated into bigger groups or replaced by other emerging media corporations, resulting in a group of so-called ‘super-indies’, as noted by Chalaby (2010). A closer analysis of

these references shows that consolidations occur in profusion (for instance Hit Entertainment, RDF Media, Tiger Aspect and The Mersey Telev. Comp. were all incorporated into bigger companies).

This list does have some flaws though. TXTV is a company listed on the EAO (2010: 226) yearbook as being number 9th in that rank, with £130 million turnover which could place them in the top positions of *Broadcast* magazine's list. However, the company is not listed in later publications. These facts show the difficulties and inaccuracies of doing research in the area. Available lists and associations cannot possibly grasp the whole activity. There are differences in the definitions of independency used by the different publications, and there will be companies that for some particular reason stay off the 'radar' or cannot be properly addressed. As a remark to the reader, few companies like to make their revenues public.

Notwithstanding those gaps, the league published by the *Broadcast* magazine may be regarded as representative of the British industry by the notoriety of the magazine in the industry. Since 2003 the magazine started to publicise the *Indie Survey* collecting revenues, hours of production and other basic statistics from the sector. A compilation of those surveys is presented in Figure 16.

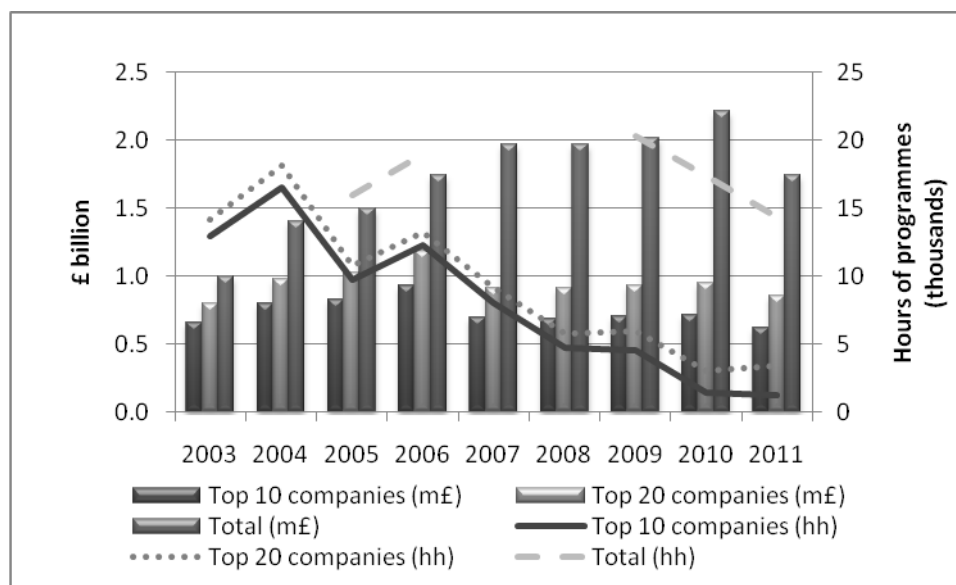


Figure 16 – Revenues and total hours of produced programmes of the top UK's independent production sector

Source: Table 84.

Note: 'Top 10' and 'Top 20' refer to the biggest independent companies in Britain in terms of annual revenues.

A remarkable difference between the Brazilian and British revenues figures is that, unlike in the broadcasting and telecommunication activities where the overall revenues are comparable (as will be shown later on when discussing Table 13), the British independent sector is on another scale. While the revenues of Brazilian independent TV producers were estimated here at around £85m, their British counterparts are in the scale of billions. Consistent with the fall in revenues of commercial broadcasters after the enactment of the CA 2003 (as will be shown in Figure 19 when discussing the broadcasters' activity), and particularly in the case of ITV, the graph shown in Figure 16 indicates a steady growth in the revenues of the independent sector. Since 2003, when the new terms of trade were introduced (see Chapter 7), several authors acknowledged the fact that 'super indies' were formed in the search for economies of scale and scope in a consolidation process "not unfamiliar in the media industries in general" (Haynes, 2005: 99). However, assuming that the information of the *Broadcast* magazine relates to national operations only, the preceding graph shows that the growth of the sector is not completely monopolised by those top companies. In fact, while in 2003 80% of the sector was generated by the 'top 20' (and two thirds (66%) by the 'top 10'), from the year 2007 onwards the same group of companies achieves less than half of the revenues of the sector (and around 35% in the case of the 'top 10'). This diminishing in importance is also reflected in the amount of content produced by that group of companies. At the same level that the overall sector is growing, the number of hours produced by those 'super indies' production decreases. This could be an indication that in times of diminishing advertisement revenues, broadcasters are looking for alternative, and possibly, cheaper suppliers. After an initial period of consolidation, which resulted in 'super indies' with global operations, there might be the case of a return of the attractiveness of small companies.

While in France investment in independent production is backed by partially diverting broadcasters' revenues, in Britain these productions are mainly fostered by the 25% quota obligation for the main terrestrials, lowered to 10% for the digital channels. According to Ofcom's report, of the £2.3 billion the main terrestrials have invested in production, £1.1 billion (47%) was commissioned to independent broadcasters. That percentage is bigger than any of the percentages mandated by French regulation to invest in independent productions. British broadcasters' investment doubles that of French broadcasters reported earlier on during this chapter (£570m). Interestingly the figure

reported by Ofcom is only half of the overall sector activity as reported by *Broadcast* magazine. The nearly one billion extra reported in *Broadcast* is likely to come mainly from exports. The UK Television Exports Survey collated from information given to PACT by their associates, states a total £1.3 billion in exports, in 2009 (UKTI, 2010). A closer look at the 2008 PACT report (PACT, 2008) indicates, of a total export of £980m, that the biggest stake of the exports is due to finished television programmes (48%), seconded by licensing and formats (31%).¹⁴⁸ In 2010 these figures increased to a total export of £1,418m whilst finished television programmes accounted for 46% and licensing and formats for 37% (PACT, 2011).¹⁴⁹

Comparing these figures with French exports, Chalaby (2010) reports that already in 2007 Britain was exporting nearly eight times more (approximately £760m against £100m). The CSA recognises this weakness, noting that during the decade ending in 2007 French exports diminished by 6%, and hints that one of the reasons could be the importance given by regulation to the expression of the French language which is spoken less worldwide (CSA, 2009c: 12). Chalaby (2010) instead attributes British success to “Britain’s imperial legacy” and the “understanding of the importance of trade for the cultural industries [...]” France, he says, regulates the media and television based on political and elitist views. The reality shows that, according to the CNC, in 2008, exports diminished to below £100m, with the most successful genres being precisely those who depend the least on the production language, i.e. animation followed by documentaries (CNC, 2009).¹⁵⁰ Barthel-Bouchier (2011) also notes that French exports are strong when appropriate niche marketing is applied. Formats, one reason of the successes of British television exports, are responsible for only 12% of French trade (ibid).

After analysing the three countries’ independent production sectors, some conclusions can be drawn. First, the broadcasters’ financial contribution is sound both in France and Britain. While the British broadcasters’ commissioning is substantially greater than that of their French counterparts,

¹⁴⁸ The 2008 total figures are £980m exports, with television programmes being responsible for £469m, licensing £215m and formats £92m.

¹⁴⁹ The Pact report indicates the following break-up: television £657m (46%); DVD £181m (13%); digital rights £10m (1%); co-production £34m (2%), format £115m (8%), licensing/miscellaneous £329m (23%), production (new commissions) £11m (1%) and production (UK formats) £81m (6%).

¹⁵⁰ CNC reports, of a total of €110 million exports in 2008, €31 million in animation, €29 million in documentaries, €27 million in fiction and € 13 million in formats.

French legislation complements commissioning with other schemes such as CNC grants and Sofica. Brazil does have similar contributions and schemes to those in France, although on a smaller scale. More recently, the Paytv Act 2011 has opened the possibility of increasing public funding. However, the most substantial tranche of financing is not being considered in that country; commercial broadcasters do not have any substantial obligation to finance independent production.

Another aspect that draws attention in this survey is the success of British independent broadcasters' exports. While some argue that the success is due to changes in legislation introduced by the CA 2003, French regulation, as Chapter 7 has shown, also has similar instruments in place. Therefore, there might be other cultural and industrial reasons for that difference. Notoriously, within these cultural discount factors is the language.

Having discussed the major contributors to the production of national content 'at an arm's length' of broadcasters, the next section will discuss the most important agents in this supply chain, at least in terms of their combined revenues: the national broadcasters.

8.4 National broadcasters, global media and 'convergent' telecommunication groups

As this thesis is concerned with the production of national content in times of digital convergence, and thus of media globalisation, the discussion in this section will compare national broadcasters' relative size and importance not only in the national context but, also, with regards to global media groups.

8.4.1 The global players

As already discussed in Chapter 2, global media groups and telecommunication operators detain positions in several activities and markets worldwide, competing locally with the biggest national and traditional broadcasting companies. Figure 17 shows, in the top graph, the relative position in the worldwide rank of the biggest media groups and in the bottom graph the same order but in terms of revenues.

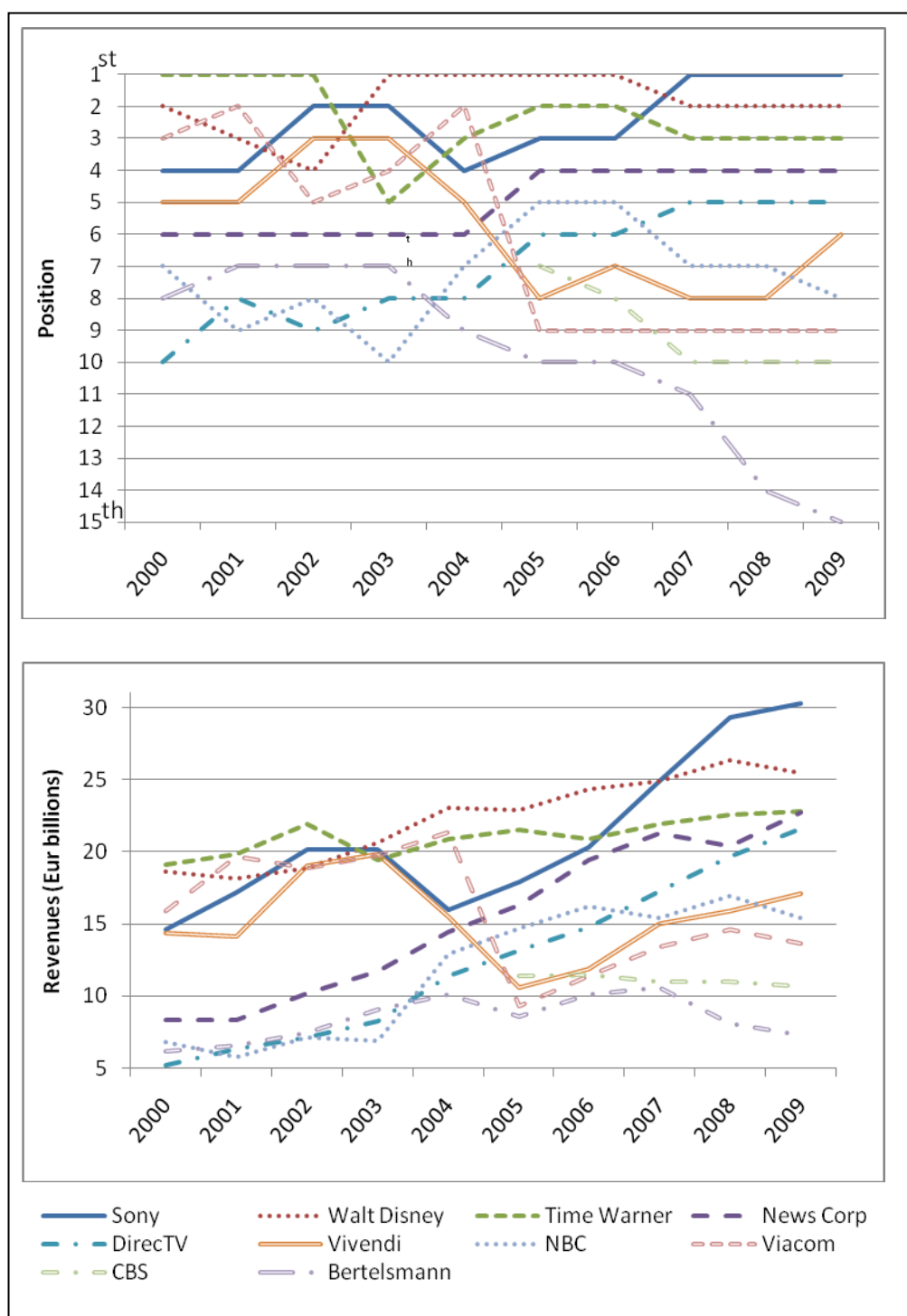


Figure 17 – Ranking by audiovisual turnover of the main global media corporations by position (top) and by revenues (Euros thousand) (bottom)

Source: (European Audiovisual Observatory, 2003, 2006, 2008, 2010)

As can be seen from the graphs in Figure 17, positions and revenues changed significantly during the last decade for some global media groups. Those differences may be partially explained by changes in ownership of parts of those media groups, as widely reported by press economic

analysts, but also due to other major events and failures or successes of the strategies followed. Without wanting to exhaustively explain the reasons for all fluctuations, I will illustrate some events in order to suggest to the reader the kind of influences and consequences created in the local scene by global media.

According to the press, Vivendi's drop in 2004 and 2005 is a reflection of the selling of the Universal brand to the American network NBC, due to the group's financial difficulties. Analysts widely attributed the downsize to the high level of debts that Vivendi incurred when it acquired that company years before, while trying to significantly break into the American market (see for instance Goldstein, 2005). Viacom's drop was due to CBS's acquisition of its broadcasting activities (see Szalai, 2006 for details on the deal). Sony's drop in 2004 may be attributed to the creation of the separate company Sony-BMG, a joint venture between Sony Music and Bertelsmann. In 2008 that partnership ended and the music company was fully owned by the Japanese group (for business news analysis see Nakashima, 2008). The traditional American media groups Time-Warner, Walt Disney and NBC managed to maintain their revenues during these decades, showing that their business-model of owning studios, broadcasting channels and worldwide distribution outlets has proven successful, even with the advent of new more comprehensive 'digital convergent' companies.

Of that list, the only company that did not have any significant increase in revenues during the decade was Bertelsmann. According to information in the press (see for instance Sweney, 2011), originally a publishing house, the company's major asset in media is the RTL group which owns almost fifty channels across Europe and is one of Europe's largest production conglomerates, owning several production companies, including *FremantleMedia* and *Grundy*. The steady revenues achieved by Bertelsmann are reflected in the bottom graph of Figure 17. As the German conglomerate is failing to increase revenues as much as their competitors, they are constantly losing positions in the rank. The biggest winners of the decade are DirecTV (5 positions), Sony (3 positions) and News Corp (2). Important to remark is that two of these winners are paytv companies and US based. Adding Vivendi to the role of paytv companies, both the French conglomerate and News Corp also have significant telephony operations.

Another interesting point to be noted from the list of the major global media companies of Figure 17 is that only one company is originally from one of the countries of this case study (Vivendi, France), while the majority of the companies might maintain interests, or operate, in all the three countries under scrutiny. However impressive that list of global media corporations might seem, and however tiny national broadcasters might be, compared with those corporations, digital convergence brought in another set of strong competitors. As will be illustrated shortly, ICT companies, ranging from telecommunication providers to computer (software and hardware) and electronic manufacturers, are, in terms of revenues, as big as or even much bigger than those well established and recognised global media companies. Figure 18 shows the main convergent companies operating in Europe in 2009 as listed by the EAO yearbook (2010: 10).

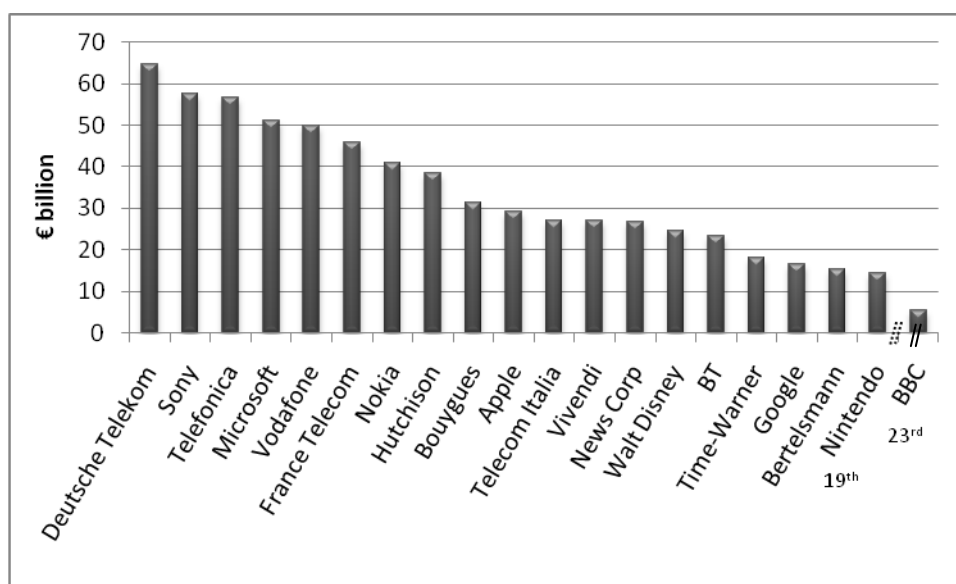


Figure 18 – Revenues of main convergent players in Europe in 2009

Source(European Audiovisual Observatory, 2010: 12, T2.5)

The figure shows the top nineteen companies plus the first broadcaster-only in the European ‘top 50’ list, which is the BBC, in 23rd position. The power of these ‘convergent’ companies is undeniable. Considering the European revenues only, Deutsche Telekom displaces Sony, which was the biggest global media company in the rank of Figure 17. Vivendi (the 6th global media company) falls to the 12th position, followed by NewsCorp (originally 4th) and Walt Disney

(consistently 2nd in the other list). Closing the list of global media companies is Bertelsmann, 18th in this list (15th in the previous one).

The list, however, fails to reveal the relative importance of the audiovisual business (units) in the overall performance of those conglomerates. Although a comprehensive look at all the units of these companies of that list would be impractical for this research, I will detail Vivendi as an overall example. According to their corporate report (Vivendi, 2011a), video games (Activision Blizzard) accounts for 12% of their revenues, music (Universal) for 15%, mobile and ISP for 58% (SFR (44%), Maroc Telecom (10%) and (Brazilian) GVT (4%)) and paytv and cinema for 16% (Canal Plus). The example is emblematic. Although originating in the media sphere and an important producer of content,¹⁵¹ currently the newer business of telephony and internet provision represent Vivendi's main business. I will return to this cash generating power later on, but for now I will return to the analysis of Figure 18.

The list is symbolic of the differences. The British PSB has revenues of one third (1/3) of the preceding company on the list, a videogame industry, and less than 10% of the first of the list, Deutsche Telekom. Telecommunication companies, notably telephony operators, have 8 positions in the list (Deutsche Telekom (1st), Telefonica (3rd), Vodafone (5th), France Telecom (6th), Hutchison (8th), Bouygues (9th), Telecom Italia (11th) and BT (15th)) plus one main supplier of mobile equipments (Nokia (7th)). Internet and computer industries occupy three positions (Microsoft (4th), Apple (10th) and Google (18th)), plus one from the gaming industry (Nintendo (19th)). Traditional and worldwide media giants occupy intermediate positions in the European operations' list (Walt Disney, 14th, and Time-Warner, 16th). Although nearly all companies on the list are regarded as 'convergent', as they have major operations in different communication segments, Sony (2nd) and Bertelsmann (18th) are, most probably, the only companies whose main business is not the provision of telephony. Even Sony, the world's leading media company, which owns several media labels, including Columbia and BMG, is second on the European list.

¹⁵¹ Although it is well known that the origins of the conglomerate can be traced to the water utility company *Compagnie Generale des Eaux* (see for instance Wikipedia).

As telephony companies account for almost half of the revenues of the list, the cash generating power of those operators clearly shows the economic power of these new competitors in the field of audiovisual media. For instance, in the UK, while the TV license generates nearly £12 per month per household (Ofcom, 2010c: 133), paytv's average subscription is nearly £30 per month (ibid: 137) and each mobile generates £16 monthly (IP Network, 2011: 578; Ofcom, 2010c: 13, 281). The total cash generated by those services are £2.7 billion for TV license (Ofcom, 2010c: 134) (used by the BBC), £8.5 billion (nearly three times more of the BBC's income) for paytv (ibid: 135) (mainly shared by BSkyB and Virgin) and £15 billion (nearly five times more of PSB's income) for mobile communications (ibid: 260) (mainly shared between T-mobile, Orange, O₂, and Vodaphone). This disparity in earnings brings attached players with different purchasing power to the activities of production and distribution of content which, in turn, could jeopardise traditional broadcasters' production activities and the possibility of their acquiring the most desired content.

The possible implication of this discrepancy could become visible in content prices where and when telecommunication operators start to buy content. For instance, if football rights experienced a considerable increase in value when paytv operators started to acquire the distribution rights, as discussed in previous chapters, telephony operators have economic strength to pose an even bigger threat to traditional broadcasters. That fear can be seen in the recent Brazilian Paytv Act (PA) 2011 dispositions, as commented on in Chapter 7. In a move that clearly protects national broadcasters, telecommunication providers are explicitly forbidden to contract Brazilian actors for producing audiovisual content or to acquire events of national interest (PA 2011, art. 6). The Brazilian regulation suggests a policymakers' dilemma as brought by digital convergence. To have relevant and national broadcasters with significant market power was preferable to allowing wealthier and global telecommunication players to dominate the content market.

8.4.2 Global versus national players

Narrowing down the analysis from global and regional to the major players in each country, the next graphs in Figure 19 display only the British, French and Brazilian media companies ranked in the list of the 'top 50' world companies as listed by the EAO yearbook.

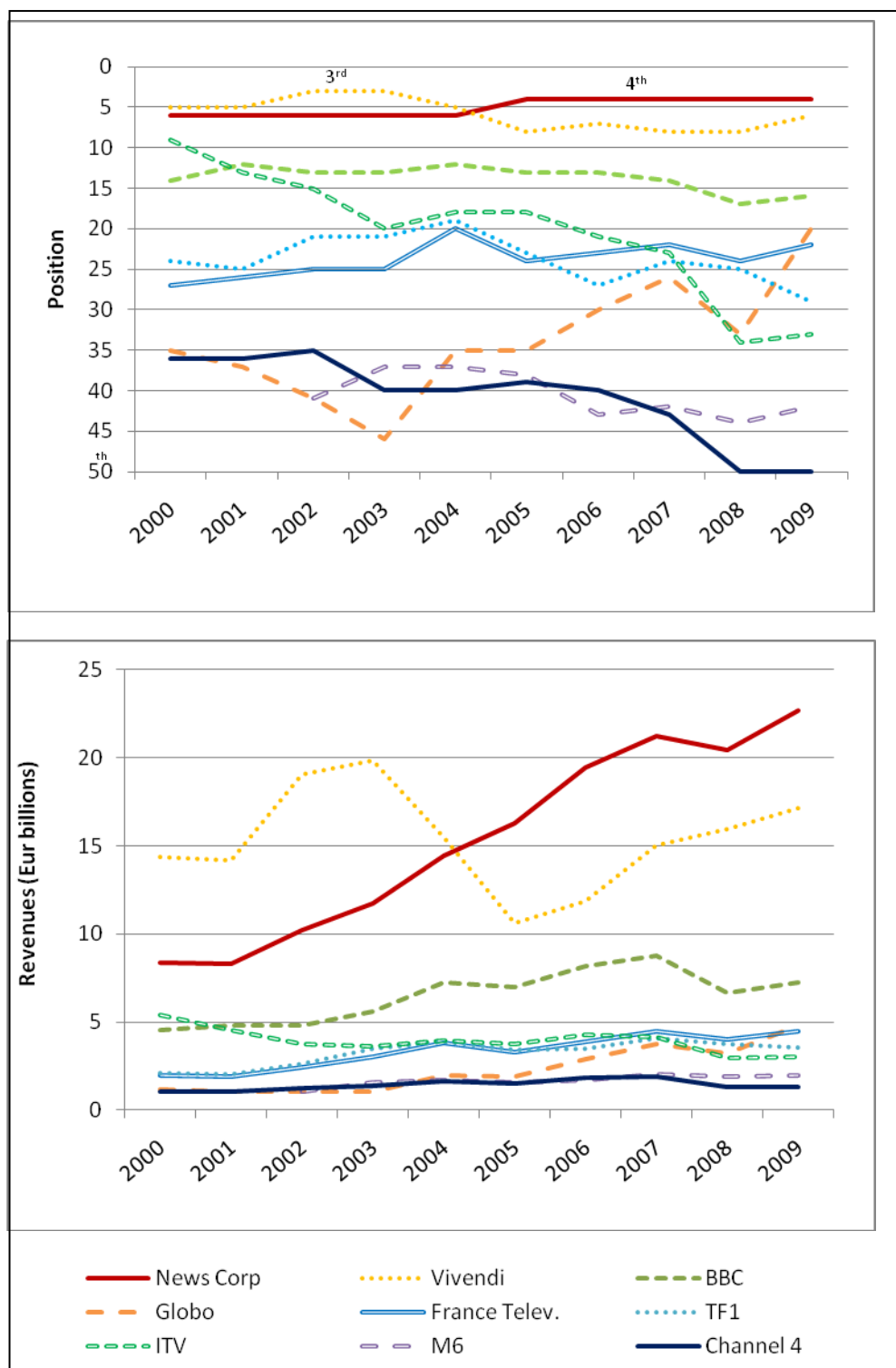


Figure 19 – Ranking of the main media companies in the UK, France and Brazil by position (top) and by revenues (Euros billions) (bottom)

Source: (European Audiovisual Observatory, 2003, 2006, 2008, 2010)

The list of the companies shown in the previous graphs indicates that only one company is based in Brazil, Organizacoes Globo, and the others are split equally between the UK (News Corp – partially owner of BSkyB, BBC, ITV and Channel 4) and France (Vivendi, France Televisions, TF1

and M6). That list shows a surprising symmetry. The biggest companies in the UK and in France are the main paytv operators (NewsCorp and Vivendi), with each country's PSBs (BBC and France Televisions) in second place, followed by the main commercial broadcasters (ITV and TF1).

Although Vivendi has other interests than paytv, the power of the subscription model over the TV license and advertisement-based model is again obvious in the bottom graph of Figure 19. While paytv operators are constantly increasing their revenues, the levels of the TV license are maintained (with a slight increase on account of the expenses due to the digital switchover), and advertising revenues, commonly related to overall economic activity, are either constant or declining (most significantly in the ITV case).

In the ranking positions shown in the top graph of Figure 19, there are two clear tendencies. First, Globo gained fifteen positions during the last decade (from 35th to 20th). This rise must take into account the reflection of the national economic scenario. According to the World Bank, during that period, Brazilian GDP grew 38%, against 18% for the UK and 14% for France.¹⁵² Another economic reason reflected mainly in the relative increase of French companies' revenues is the devaluation of the British and Brazilian currencies (-29% and -26% respectively) against the Euro, the currency used on the graph.¹⁵³ On the other side, steadily losing positions in the ranking since 2004, are ITV and Channel 4. In the decade analysed they decreased 24 and 14 positions respectively.

These broadcasters' tumble is most noticeable from the year 2004 onwards, when the new British rules disaggregating the commercialisation rights imposed by the Communications Act 2003 allowed producers to keep hold of secondary rights, as discussed in Chapter 6. This graph in conjunction with the analysis of the independent production sector earlier on, suggest, that the measure had a negative impact on commercial broadcasters. Channel 4, for instance, is entirely – and legally - dependent on independently produced content. Following the same tide, ITV's biggest hits in 2009 were the independent formats *Britain's Got Talent* and *The X Factor*, as I will discuss

¹⁵² See Annex 9, Table 85 for details.

¹⁵³ According to the Brazilian central bank public database available at <http://www4.bcb.gov.br/pec/conversao/Resultado.asp?idpai=convmoeda>, accessed on 11/10/2011

later on in more detail.¹⁵⁴ Hence, at this point, I would like to remark that the highly consolidated independent production sector in Britain, with companies which often have other interests in other countries, should not be regarded as small players compared to broadcasters. Regulators should distinguish between producers which are truly national and independent from global companies – and therefore needing the extra attention and incentives from regulation - from those who are part of bigger groups either locally or internationally. In highly consolidated markets the concept of independence should, therefore, be re-assessed.

The figures revealed in this section have suggested that broadcasters, despite roughly maintaining their revenues, are challenged not only by global media companies but also by ICT industries, including telephony operators. By a combination of measures and circumstances, Rede Globo is recording a growth similar to that experienced by Vivendi. The commercial broadcasters of the European countries, who did not have protective clauses in regulation, are suffering the consequences of new players and increased competition.

8.4.3 Local operations of global companies

Even though local operations of global companies benefit from global gains of scale, and also from possible direct investment from profits elsewhere, there are critics of these global comparisons. They may argue that revenues made in other countries are not actually fully transferred to local operations. In addition, sometimes global companies only partially own local operations.¹⁵⁵ Figure 20 indicates the total revenues of the main operators due to the operations in the country only. Their 'national size only' is compared to the total revenues of the main commercial and the PSB.

¹⁵⁴ According to BARB top audiences for one episode reached 18.2m for *Britain's Got Talent* and 14m for *The X Factor*. Those formats were developed by the independent producer Simon Cowell. In contrast, other ITV-owned long lasting hits, such as *Coronation Street*, achieved around 11 million viewers. Audiences available at <http://www.barb.co.uk/report/weekly-top-programmes-overview?>, accessed on 11/10/2011.

¹⁵⁵ For instance, as widely reported by newspapers, News Corp owns less than 40% of British BSkyB (Guardian, 2011) and Sky Brasil is 97% owned by Directv (Rosa, 2010).

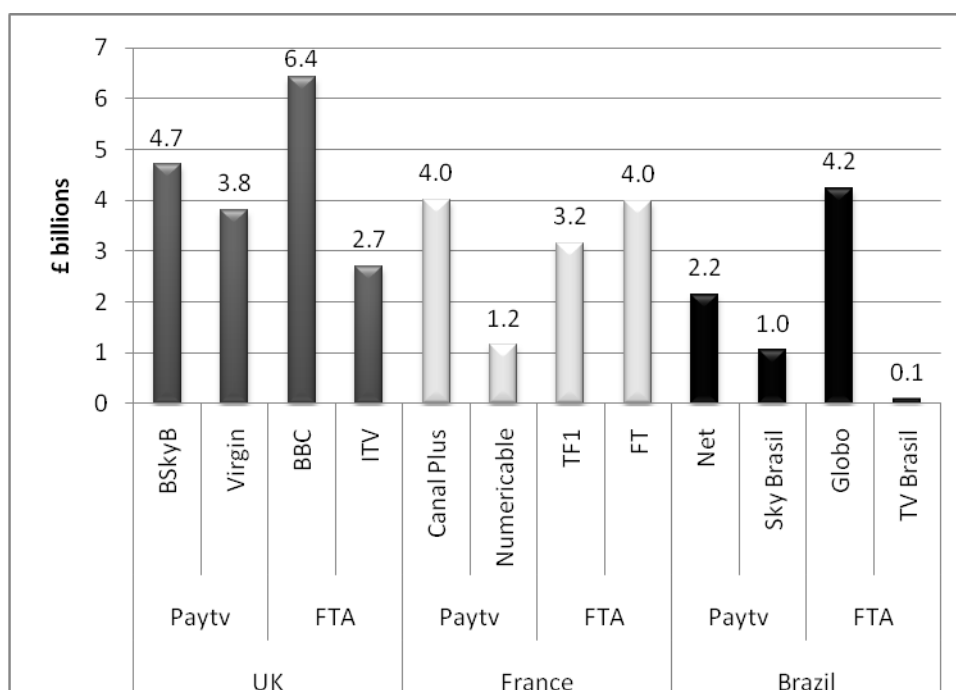


Figure 20 – Revenues due to local operations only in representative media operators 2009

Notes:

- 1) Distribution technologies: BSkyB (DTH), Virgin (cable), Canal Plus (multiplatform paytv), Numericable (cable), Net (cable), Sky Brasil (DTH). PSBs: BBC, FT (France Televisions) and TV Brasil. Main commercial FTA broadcasters: ITV, TF1 and Globo.
- 2) The graph indicates local operations' revenues for global groups BSkyB (owned by News Corp), Canal Plus (Vivendi), Numericable (multinational group), Net (Telmex) and Sky Brasil (DirecTV) and the total revenues of national FTA broadcasters.
- 3) National broadcasters' overseas operations' are included in the reported revenues.
- 4) PSBs figures relates to their budget and revenues (BBC TV license income is approximately £2.7 billion (Ofcom, 2011: 98))
- 5) Brazilian Net and Sky revenues reported from blogs reproducing corporate announcements.
- 6) Budget for TV Brasil was assumed as being the total budget of EBC (the state-owned company that produces the PSB channel) as reported from newspaper Estadão.

Sources: BSkyB, Virgin and Canal Plus (Ofcom, 2010c: 136); Numericable (2010); BBC, ITV, TF1, FT, Globo (European Audiovisual Observatory, 2010: 10); Net (Telesintese, 2010); Sky Brasil (Sirlordalecio, 2009) and TV Brasil (Tosta, 2009).

Figure 20 indicates the financial strength of the main paytv operators when compared to the main commercial and the PSB of each country. The BBC, relying on the TV license and exports, has higher revenues than the local operations of News Corp. However, considering the TV license only (£2.7 billion, see Ofcom, 2011: 98), the BBC and ITV combined have less revenue than the main paytv competitor (£5.4 against £8.5 billion). This situation is not repeated in the other countries, which indicates that in the UK, competition between services is more intense. In France the commercial broadcaster has comparable revenues with the major paytv (Canal Plus) and more than doubles the main cable distributor. Not surprisingly in Brazil it is the commercial broadcaster Globo that has higher revenues than the paytv companies. In fact, Globo is the only broadcaster

that has greater revenues than the overall sum of the local operations of the main paytv companies.

The levels of revenues of the main paytv operators in the UK suggest that competition has already reached a point where those companies cannot be regarded as minor competitors or minor players in the broadcasting scenario. While the FTA broadcasters have high levels of content obligation, the paytv companies, despite having the financial capacity, do not have any obligation towards the production of national content. This dual system of regulation results in asymmetrical treatment. In France, that situation is addressed by regulation, as the distributors do compulsorily contribute towards the production of national content. In Brazil the regulatory burden is diametrically opposed to the size of the revenues. The commercial broadcaster Globo, which has the biggest revenue generating power, is the least regulated. Conversely, the PSB has the biggest regulatory load, but has the least resources of them all to accomplish the attributed tasks. Currently, with the Paytv Act 2011, paytv operators have obligations towards the financing and distribution of independent content while the biggest national players do not have any deverticalisation rule imposed.

Detractors of increasing obligations for the market leaders could argue among other things that those players already contribute towards the generation of national content, as is the case of BSkyB which produces channels in the UK with nationally produced content (such as Sky 1) or Globo, whose overwhelming output is national. However, in this thesis I am suggesting that the main players should financially contribute significantly more towards the generation of national content, spreading the wealth concentrated in the hands of a few. The more balanced situation in France indicates that the financial contribution towards the production of national content generated a market where local players and FTA broadcasters hold a stronger position, even in a competitive market.

As with the other segments of the audiovisual industries already discussed (film and independent producers) more production could have significant impact on exports. Although I already pointed out that cultural discount factors may hamper the sale of nationally produced products elsewhere, there are several examples of series and formats that were a great success outside their country of

origin. Britain, perhaps, is the most relevant case with its success in the format industry. Ofcom (2010c: 63) reported £1.3 billion in British television exports compared to £173m or, according to CNC £120m, of France (CNC, 2011f).

As in the case of Brazilian films, there is little concrete information on Brazilian television exports. It is well known that Globo exports its *telenovelas* worldwide. Although Globo does not publish financial reports, Bortoloti (2006) estimates that Globo exported £20m per year in the mid-2000s. As commented earlier on in this chapter, according to Brazilian authorities the country exported £50m in relation to all cultural products, which indicates that Globo figures could represent a high fraction of those exports, as expected. The low result in terms of broadcasting exports in the Brazilian case is even more significant when compared with the overall trade as registered by the MDIC.¹⁵⁶ At the same time that the country had such a low performance, the authority also reported imports of £590m giving a substantial overall deficit of £540m with cultural products.

8.4.4 Alternative sources of funding for national content

The Brazilian figures show one effect of liberalisation which is shared by the other countries. At the same time that international media players are introduced on the national market with considerable revenue generating power, they also contribute to an increase in the imports of audiovisual goods in the country which increases the deficit of foreign trade. Therefore, besides the production of national content, which develops the national economy with a potential for exports, the scheduling of more national content (and hence less imported content being used) has a positive impact on foreign trade. Additionally, if a levy on paytv operators diverts parts of the profit that would eventually be sent abroad towards the production in the country, the negative impact of paytv in the cultural products' balance of trade would be diminished.

Certainly, as the paytv platforms are the biggest beneficiaries of liberalisation, as their increasing revenues have shown, these are the companies that have the most resources to finance the production of additional national content. The analysis of audience shares later on in this chapter will show that, although the main traditional broadcasters managed to slowly delay their decay by

¹⁵⁶ The authority in charge of the industry and commerce mentioned previously.

adding spin-off channels, the increase of advertisement revenues for commercial broadcasters will become extremely difficult. Likewise, for social reasons, to substantially increase the value of the TV license would be contentious. The Brazilian case is slightly different, as already mentioned, due to the recent growth in the economy and the locks contained in regulation. However, in the not impossible case that competition is further liberalised in Brazil, national broadcasters and Rede Globo will face the same fate of their European similar. Therefore, if there is a political concern with the maintenance in the levels of production of national content, a new source of financing is needed. The most natural target would be those profiting from distributing content, i.e. the paytv platforms and the telecommunication services (able to distribute audiovisual content). Although partially addressed in the case of France (with the COSIP and the financing contributions) and in Brazil (with the very modest contributions towards the PSB and audiovisual fund), in the UK, paytv platforms do not contribute with levies or with regulatory obligations towards the production of national content. The revenues indicate that there is room for a levy on those operators which could be added to the 'pull' range of policies.

A key question remains though, if the levy is collected, who would be the beneficiary: the PSBs and the other main terrestrials? A viable alternative would be independent producers (in the revised sense) both for television and film, and the production to be used by paytv operators as there are already substantial quotas on FTA. It is in practice a deverticalisation procedure not much different from enforcing an independent quota to those operators. The difference is that the levy reverts revenues, and most probably profit originally destined to foreign owners, to the production of national content.

There is another source of income for paytv platforms which is partially responsible for imbalances in the national *mediaspace* and which could also be the object of financial levies. As already discussed in previous chapters, sports coverage constantly fetches increasing values as these events are key for securing viewers. A levy on these deals could also be diverted towards the production of national content. Certainly that contribution would bring criticism from the clubs which, ultimately, would receive less revenue from the paytv operator, sport fans, other viewers not concerned with the issues of national content and certainly from liberals who simply will oppose

any form of intervention in the markets. Although these new resources certainly could be used in medical care or education, the move could bring some form of re-equilibrium to the broadcasting environment and some extra resources towards the production of national content.

Moving on from these proposals and returning to our third step, no market assessment on the communication industries would be complete without an analysis of the current levels of development of broadcasting and telecommunication services. That evaluation would bring important insights as to where the industries are well developed and mature in term of market uptake, and where there is still room for growth. This appraisal on future directions will be beneficial, both for media policy scholars, as it helps to understand the development of communication markets, and for policymakers, as it will indicate points for possible legislative future action. The next section will concentrate on the uptake of the different communication services.

8.5 The take up of digital communication technologies

Complementing the panorama already given in Chapter 5, this section will highlight the main facts usually used by regulators for comparing the inter-related broadcasting, telephony and internet access sectors; all services capable of delivering audiovisual content.

Initially I would like to comment on the uptake of bundled packages which could be regarded as one indicator of digital convergence (in complements). According to Ofcom, packages are becoming increasingly common in the UK with almost half (46%) of the households using this provision (Ofcom, 2009a: 20). The CSA (2009b: 25) reports that there are 46m television sets in France, 9m mobile TV devices and 300,000 PCs enabled with viewing cards. The number of non-traditional TV, more than 9m, indicates that at least one out of five viewers can access audiovisual content from new convergent platforms. In Brazil the panorama is slightly different. As already seen, Brazil has relatively low broadband and paytv penetration. From the existent 33m fixed telephone lines in operation in the country, eight million have broadband access (24% in comparison with 44% of the UK). In contrast, the eight million cable TV customers are responsible

for three million broadband connections. The biggest cable operator in Brazil is reported to have 400,000 *triple-play* customers out of their overall 3.7m customers (10% of their base) (Anatel, 2010; Singh et al., 2010). Although more data is needed in order to evaluate the extent of digital convergence, those figures suggest that convergence in complements is occurring in considerable proportions in all three countries.

Table 13, extracted from Ofcom's yearly International Communication Market Report (Ofcom, 2011: 11), presents the key facts of those convergent industries of the countries of this study, plus the USA. The inclusion of the latter country in the following table is justified by it being the biggest market and industry, serving as a market benchmark.

Table 13 – Key facts on audiovisual and telecommunication services in 2010

	UK	FRA	BRA	USA
Television and audiovisual				
TV industry revenue (£b n)	11.3	10.4	10.6	94.0
Change in revenues (%YOY)	8.5	8.8	17.6	6.3
Revenue per capita (£)	181	160	53	304
Largest TV platform	DSat	DTT	DSat	DCab
Largest TV platform (% of homes)	42%	38%	39%	39%
TV viewing per head (mins/day)	242	212	222	283
Digital TV take-up (%)	97	93	59	87
Pay TV take-up (%)	52	57	18	88
Digital switchover date	2012	2011	2016	2009
Internet and web				
People online (m)	38.7	40.6	44.9	199
Fixed BB connections per 100 HH	74	77	25	70
Mobile BB connections per 100 HH	8	4	n/a	n/a
Mobile-only broadband HH (%)	5	2	n/a	6
Internet access via a mobile (%)	46	39	n/a	41
Telecommunications				
Telecoms service revenues (£b n)	27.2	31.8	34.2	188.2
Telecoms revenues per capita (£)	434	486	169	608
Fixed lines per 100 population	53	33	21	48
Monthly outbound fixed-line minutes per capita	172	145	87	148
Mobile connections per 100 pop.	130	99	100	98
Monthly outbound mobile minutes per capita	170	132	102	603
Fixed broadband connections per 100 pop.	31	33	7	27

Source: (adapted from Ofcom, 2011: 11).

The analysis of Table 13 shows some remarkable similarities. The absolute wealth of both broadcasting and telecommunication industries of the three countries is similar. While television has revenues of around £10 billion, telecommunications are around £ 30 billion a year. The absolute numbers of internet users are also similar; around 40 million people are connected. While the revenues indicate that the overall sizes of those markets are similar, the per capita indicates that, apart from terrestrial broadcasting, communication services have a smaller intake in Brazil. While FTA TV penetration is comparable, paytv subscriptions, DTV, broadband connections and fixed and mobile telephony per inhabitant is as low as one third (for internet connections) of the European levels for the South American's country. This is a reflection of the well known inequalities of Brazilian society. For instance, as reported by Brazilian official institute of statistics (IBGE, 2010: 96), while 97.2% of urban households have a television set (similar to 98.5% in France and 96.7% in the UK (IP Network, 2011: 164, 578)) only 39% have a computer (against 67% and in France and 80% in the UK (ibid)) and, even less, 32%, an internet connection (against 64% and 67% broadband connections in France and the UK (ibid)). A summary of the inequalities may be given by a single statistic given by IBGE. Although the figures doubled from 2004, in 2009, only 21% of Brazilian households had public electricity, fixed telephony, internet access, computer, fridge, colour television and washing machine (IBGE, 2010: 86).¹⁵⁷

While the preceding Table 13 shows synthetically all three segments' main indicators, it fails to indicate the uptake of the different broadcasting technologies. The following Table 14 shows the breakup of the penetration of the different distribution platforms.

Table 14 – Penetration of the different broadcasting services in 2009

Service	UK	France	Brazil
FTA	48%	43%	82%
Satellite (DTH)	37%	23%	5%
Cable	14%	14%	8%
IPTV	1%	18%	0%
Other paytv	0%	2%	1%

Source: UK and France (Ofcom, 2010c: 160); Brazil (Annex 9, Table 86)

¹⁵⁷ There is also a major national divide, according to the same statistics the lowest figures are in the North region (7.5%) and the highest in the South East (28%), where the cities of Sao Paulo, Rio de Janeiro and Belo Horizonte are located.

Table 13 had already shown that paytv uptake in Brazil was far smaller than the other services and that analogue TV was the biggest platform with 56% of the shares. Table 14 however shows that FTA is more popular than that in Brazil. Figures in Table 14 indicate that both cable and DTH have a smaller intake than in the European examples but also that FTA television is overwhelmingly more popular in Brazil. There are several possible explanations for that considerable difference in penetration. Initially, it is due to the already discussed socio-economic differences of the country which result in fewer resources available for spending on paytv services. Other reasons may include the lack of a TV license fee, the practically unregulated construction of commercial national networks and the development of highly popular, carefully produced and cultural relevant programmes, namely the *telenovelas*. All those aspects were already discussed throughout this thesis. However, there is another technical issue which is hidden in those percentages and which should be measured differently by regulators around the different countries: the free satellite reception.

As already mentioned in Chapter 5, international statistics do not properly account for free satellite services. In a country with huge continental distances and still with ten million rural residences (IBGE, 2010: 80), free satellite became an important distribution platform for commercial broadcasters for reaching those scattered audiences.¹⁵⁸ It is difficult to account for the precise number of these unlicensed and unsubscribed viewers. Castro (2007) estimates up to 15 million households. A cross examination of IBGE's and Ofcom's data indicates that free rural satellite alone could contribute from 4 to 7 million households, adding to the FTA service from 7 to 12% penetration (see Annex 9, Table 86).

Nevertheless, it is important to remark that free satellite reception is not really a unique Brazilian characteristic. After the national regulations that standardised the decoders in the EU (see Levy, 1999: 68-70 for details),¹⁵⁹ as long as users pay for the TV license, they are allowed to receive

¹⁵⁸ However, it is important to remark that satellite reception is widespread in urban areas with deprived infra-structure, which in the Brazilian case adds significant contingents of users for this service.

¹⁵⁹ Member States' regulations are based on the 1995/47 Directive on the use of standards for the transmission of television signals.

hundreds of channels depending only on the direction they chose for their satellite dish.¹⁶⁰ Brazilian users, on the other hand, can receive all main terrestrials and other minor networks from the several satellites that 'beam' to or near the territory. The uniqueness (at least for this case study) of the Brazilian case is the regulatory arrangement. While in the EU the service is regulated and both broadcasters and users need to be licensed, in Brazil it runs as a free service. Neither viewers pay, as in Brazil there is no TV license, nor do broadcasters need to license satellite channels. The only license needed is for the satellite operator, as an operator of a satellite for transporting telecommunication signals (Anatel, 2000).¹⁶¹ As a result, FTA broadcasters can freely agree with satellite operators the distribution of their signal, and commercialise specific advertisements for those (mirrored from terrestrials) channels without the need of (paying for) a license.

While free satellite represents an important ally to commercial networks, it may also represent a barrier to an increase in the uptake of paytv systems in Brazil. It is true that the figures in Table 13 indicate that paytv subscriptions have room to increase in the three countries while compared to the USA (90%), or at least for Brazil to pass from the current 14% to the levels of the European countries (over 50%). However, the countries' mediaspace and viewer options are different. The UK and France have rolled out a DTV system with multiprogramming which, together with the already mentioned European set-top box regulation, enables viewers to access a considerable number of channels without the need for subscription fees. Brazil has the free satellite option which rivals small paytv offers, a significant option in a country with such levels of inequality of income.

What would be more likely to become a reality in the Brazilian case is the increase in the uptake of broadband internet. The figures of the European countries already achieved the same levels of the USA (around 70%) and Brazil is still around 20%. There are several indications that the increase in broadband is a matter of state policy in Brazil and numbers are constantly increasing. For obvious practical reasons I will not enter into an in-depth analysis of the broadband programmes and initiatives in the country. However, it is important to give at least an indication of why it is more

¹⁶⁰ For instance, Freesat, the equivalent to the UK's FTA DTV platform Freeview, offers more than 150 channels to their subscribers.

¹⁶¹ In fact there is a hole in the legislation, as the requirement dictates that satellite operators can carry any telecommunication licensed operator. Therefore, as long as broadcasters hold a simple telecommunication license, they can be carried by satellite operators. From the "Code for right of usage of satellite for the transport of telecommunication signals", annex to the Resolution 220, 05/04/2000 from Anatel.

likely that broadband will increase in that country. In what could be regarded as a response to a formal indication of the Brazilian parliamentarian Lower House to roll out a national broadband plan,¹⁶² the federal government revived the extinct Telebras, the state-owned telecommunication operator that existed before the privatisation of the 1990s, in order to champion broadband infrastructure in Municipalities with fewer economic resources (Lustosa, 2009). Since 2009 broadband penetration increased from 21% to 25% (Ofcom, 2009b: 12; 2011: 11).

This section has shown that digital services have a significant uptake among viewers, and that although there is still more room for paytv and broadband connections to grow, it was suggested that, most likely, broadcasting will still maintain the lead in the near future. So far the market assessment has looked into the production and distribution aspects. The final aspect of the market analysis will investigate the viewers.

8.6 *What audiences are watching in digital times*

Thus far, this chapter has discussed some of the implications of bringing together the broadcasting and telecommunication spheres as enabled by digital convergence. From the user perspective, one of the implications of the new digital capabilities is the change in the relationship between users and media in general. Before, audiences needed to turn on the television set, possibly in the living room, and tune into the broadcaster's 'domains'. Today, users select content from different suppliers while commuting to work or waiting in a queue. Similarly, broadcasters have to compete for the attention of this new nomadic viewer with other media (for a more in-depth analysis on this topic see Jenkins, 2006: 243). As pointed out in Chapter 1, it might be logical to expect that as more services are offered and as newer and 'digital generations' become the majority, audiovisual content will be consumed differently and distributed not only via traditional broadcasting. For example, user-generated content (UGC) might even rival in importance content originally created for television. Nevertheless, there are robust indications that television viewing is still important.

¹⁶² The Lower House *Camara dos Deputados* by its committee High Studies and Technological Evaluation Council (*Conselho de Altos Estudos e Avaliacao Tecnologica*) elaborated a report *Alternativas de Politicas Publicas para a Banda Larga* (Public Policies Alternatives for broadband) with several indications to the federal government, including the creation of national authority for the coordination of the broadband initiatives.

8.6.1 The continued importance of television and of the main terrestrials

Figure 21 shows that, over nearly the whole last decade, UK viewers have been spending approximately the same amount of time watching television, around eight times more than surfing the web. During the analysed period, there has only been a difference of 7 minutes (less than 0.5%) between television's best and worst year, and there is no clear sign of decaying popularity for the old medium.

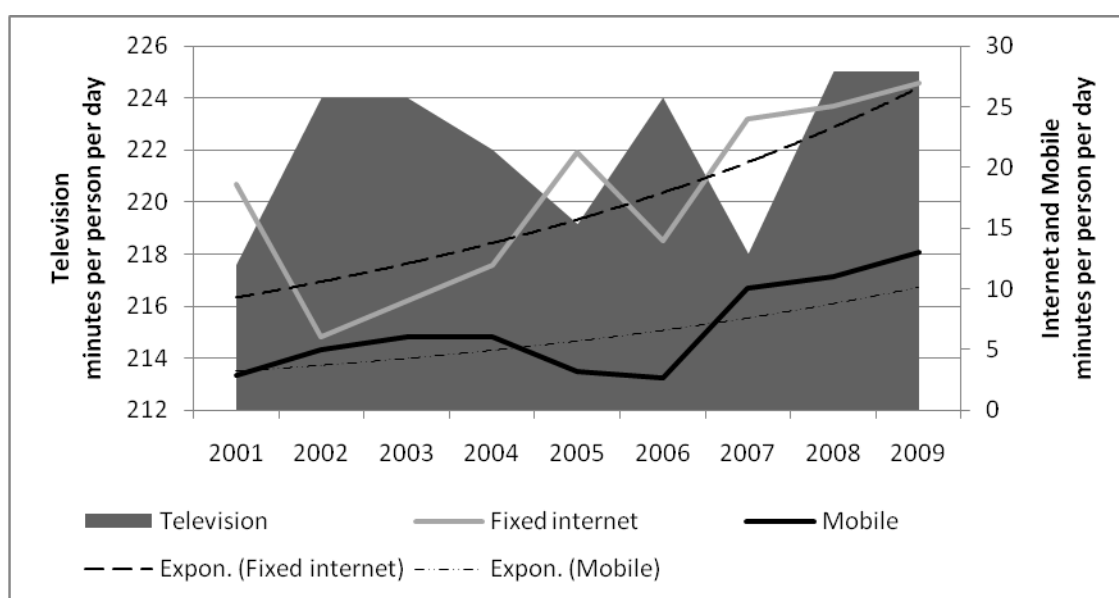


Figure 21 – Average time spent using communication services at home for UK users, including an exponential trend line for the internet and mobile services¹⁶³

Source: Annex 9, Table 68

Ofcom's research found the same constancy for the French and Brazilian cases as well. In France, data from 2005 to 2009 shows 205 minutes viewing time on average with a variation of only 3 minutes throughout the period (maximum of 207 and minimum of 204 minutes). Brazil has only two years available, 2008 (225 minutes) and 2009 (227) (see Annex 9, Table 69 for details).

Returning to the analysis of the UK and the graph contained in Figure 21, mobile and (fixed access) internet show a clear increase in popularity but still are on a different scale to television.

¹⁶³ An exponential regression fits an exponential trend in the mathematical form of $y = ke^{mx}$. Refer to Annex 9, Table 5 for details on calculations and year extrapolations.

Users still use the television, approximately, five times more than the internet and mobile phones combined. The figures and the tendencies depicted in the graph suggest that television will remain important even with digital convergence, for some time. Possibly the pace of the growth in importance of the internet will be conditioned by the renewal of the population. In that sense, the importance of broadcasting in European countries, with older and ageing population, may remain for longer than in others with higher demographic growth such as Brazil.¹⁶⁴ Perhaps amongst youth it is more certain that the internet will gain in importance faster. According to research firm *Attentional*, “conventional viewing among 16 to 34 year-olds has been declining faster than other age groups” (cited in Pennington, 2009). Moreover, in 2010, Ofcom (2010c: 236) reported that in France, Germany, Italy, the USA and Japan more people used the internet for watching UGC than for watching television (catch-up and broadcaster sites).¹⁶⁵ That finding may suggest that internet users spend more time with UGC than television while surfing on the web. On the other hand, in the UK more internet users used the web to watch television-related sites than UGC.

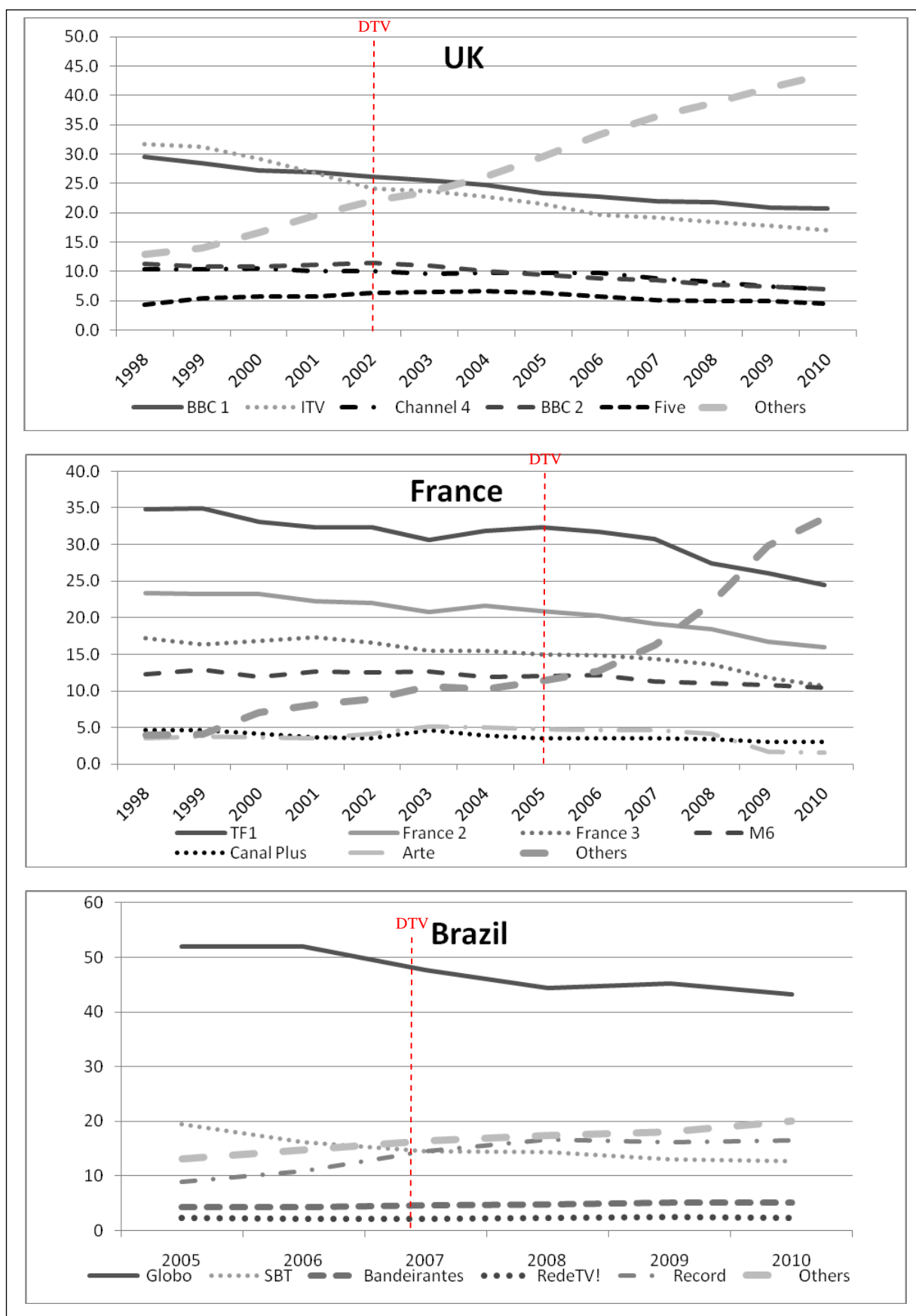
Although Figure 21 and the figures on France suggest that broadcasting will remain important for the foreseeable future, in the case of Brazil it would be even more certain that television will remain important in the following years as broadband penetration figures are still far smaller than broadcasting. Moreover, that preference in the South American country is even more noticeable as according to IBGE (2010: 96) there are more television sets than fridges in Brazil, and it is reasonable to infer that family viewing still plays a greater role at least for those with fewer economic resources and relies on television as the sole source of information. Moreover, in fact for all three countries, broadcasting viewing could be even bigger when compared to the USA, as was shown in Table 13 earlier on during this chapter. In that country, the average viewing time per day is one hour on top of the current levels of the countries of this research.

In times of digitalisation, plethora of channels and, to some extent, digital convergence, another question needs to be addressed: do the main terrestrials - whether over-the-air or on-line - still

¹⁶⁴ According to World Bank statistics (available in Google Public Stat Database, 2011), in 2010, all three countries have declining population growth rates (UK, 0.67%; France 0.52% and Brazil 0.88%).

¹⁶⁵ According to the report, in France 19% of the users use the web for watching TV and 28% for viewing UGC. In Germany, 10% and 22%; Italy, 15% and 28%; the USA, 22% and 29% and; Japan, 9% and 32%, respectively. British consumption shows the opposite direction (24% and 22%, respectively).

need to be regulated? Do they still attract significant audiences that justify a push from the government for the delivery of socio-cultural goals and a pull for driving economic development? In order to address those questions, this discussion should start with the evaluation of the audience shares achieved by those channels. The following graph shows how the audience shares have changed in recent times.

**Figure 22 – Viewing shares of main channels**

Note: Indicated on vertical dashed line the DTV launch.

Source: Annex 9, Table 70, Table 71 and Table 72.

An undeniable common characteristic of all three countries as shown in Figure 22 is the declining audience share of the main terrestrials and the increasing importance of the 'Others' category. In the UK, in 2004 the sum of the other channels' audiences surpassed the viewing shares of the most watched channel, BBC 1. In France it was in 2009 that the accumulated others outdid the channel with the largest audience share, TF1. In Brazil, that hypothetical year is still to come and seems still quite far away. In the UK, the milestone was achieved two years after the launch of the digital platform *Freeview* and in France four years after the launch of their digital system, *la TNT*. Brazil only launched their DTV services in December 2007, without multiprogramming for commercial broadcasters, as noted in Chapter 5. Therefore, the 'Others' channels curve can only increase with an increase in the uptake of paytv or free satellite. In fact, a closer look at the Brazilian graph shows that from 2008 to 2010 the increase in the 'Others' channels curve is at the expenses of a decline in, mostly, Globo and SBT, which suggests that the main terrestrials are losing audiences to these other platforms. A report from Brazilian agency Anatel indicates that paytv subscribers are increasing at a rate of nearly one million new subscribers per year, which could explain the downturn in the viewing shares of FTA broadcasters (Anatel, 2010: 12).¹⁶⁶ Free-satellite is more difficult to trace in Brazil, though, but is believed to be significantly increasing in the country. However, as all major networks are present on the main satellites, there is no reason to suppose that the importance of national commercial broadcasters would be diminished as a result of foreign-based channels, mainly from Pan American countries which are, also, broadcast in a different language.^{167,168} Although free-satellite is an important service, especially in a country with continental dimensions, for practical reasons and due to the lack of relevant reliable data available the analysis of that modality is compromised and, therefore, will not be fully assessed in this thesis.

Returning to the analysis of the preceding graphs, while a decreasing preference for the main terrestrials is shown, the graphs do not show which are the new channels diverting the attention of

¹⁶⁶ According to the report, in 2007 there were 5.3 million subscribers, followed by 6.3 in 2008, 7.4 in 2009 and 7.9 in 2010.

¹⁶⁷ Although it must be noted that satellite technology allows the broadcasting of the same channel in more than one language.

¹⁶⁸ In the case of France, however, because of the higher immigration levels, foreign-based satellite channels are more important. According to a study from the company Solis while 82% of Arab African immigrants watched the main terrestrials in France, 72% also watches at least one channel in the Arab (or Berber) language (Strategies, 2011).

the viewers. Breaking down the numbers of the broad category 'Others', Figure 23 shows that, in Britain, spin-off channels from the main broadcasters are responsible for a substantial part of those figures, in accordance with other scholars' perceptions, noted in Chapter 1. Figure 23 shows a further scrutiny of the audience shares, while including the digital spin-off channels for each of the main terrestrials.

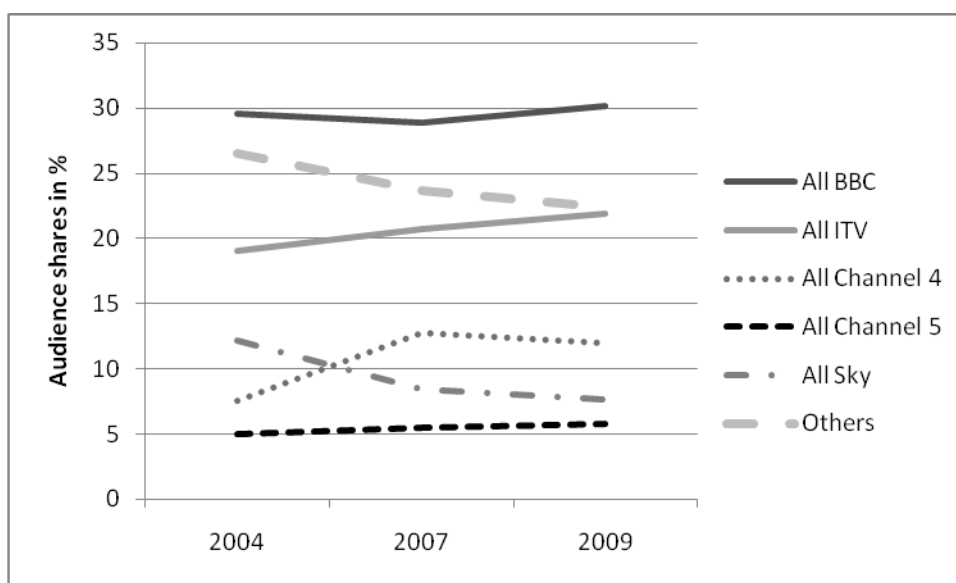


Figure 23 – Audience share of British main broadcasters including their spin-off digital channels in selected week¹⁶⁹

Source: Annex 9, Table 73.

Figure 23 shows two important facts worth discussing. First and most importantly, the main terrestrials' strategy of launching niche channels (or digital channels) proved to be successful, as each of their combined share actually rises instead of being in decline as the graphs in Figure 22 suggested. The second fact is the power of the Sky produced channels (selected in this case as being the biggest non-main terrestrial broadcasters in terms of audience shares according to BARB figures). Extracting the dozens of Sky channels available from the segment 'Others', the graph clearly shows that the late entrant digital broadcaster is an important deliverer of audiovisual content with audiences comparable to those achieved by the Channel 4 and Channel 5 families. However, Sky channels' audiences are clearly declining. That downturn may be an indication of the success of *Freeview* and the increase of the 'long tail' in all distribution platforms. According to

¹⁶⁹ Include the following channels per broadcaster: BBC (1, 2, 3 & 4, News, Parliament, Cbbc, Cbeebies, and BBC HD), ITV (1, 2, 3 & 4 and News), Channel 4 (E4, Film 4, Kiss, Magic and More 4) and Channel 5 (5 USA and 5*). Also include the channels differed in one hour (+1). Audience shares from the first week of September.

Ofcom's (2010a: 158) report, from 2004 to 2007, *Freeview* take-up increased, approximately, from four million to ten million households, while Sky subscriptions rose only from four to six million in the same period. Another important fact that emerges from Figure 23 is that the segregation of the Sky channels and the grouping of the spin-off channels restored the supremacy of the BBC, lost in 2004 to the 'Others' line. This re-grouping shows that instead of the traditional broadcasters having a total viewing share of 58.6% in 2009, as the graph in Figure 22 indicates, the traditional broadcasters, in fact, attracted the attention of 69.9% of the television audiences. Therefore, the level achieved in 2009 by the 'bouquet' of the main terrestrial broadcasters is in fact only 8% points below the audience share obtained by those broadcasters before the launch of DTV in 2002.

In France a similar pattern can be identified. Since 2008, the yearbook *Television Key Facts*, published by the RTL Group's IP Networks, provides the audience shares of relevant digital channels. According to the 2011 edition (IP Network, 2011: 172), the most viewed digital channels in 2010 were TMC (partially owned by TF1), France 5 and France 4 (France Televisions), W9 (M6), Gulli and Arte (both partially owned by France Televisions). Figure 24 shows the further breakdown of the French audience shares including those relevant spin-off digital channels.

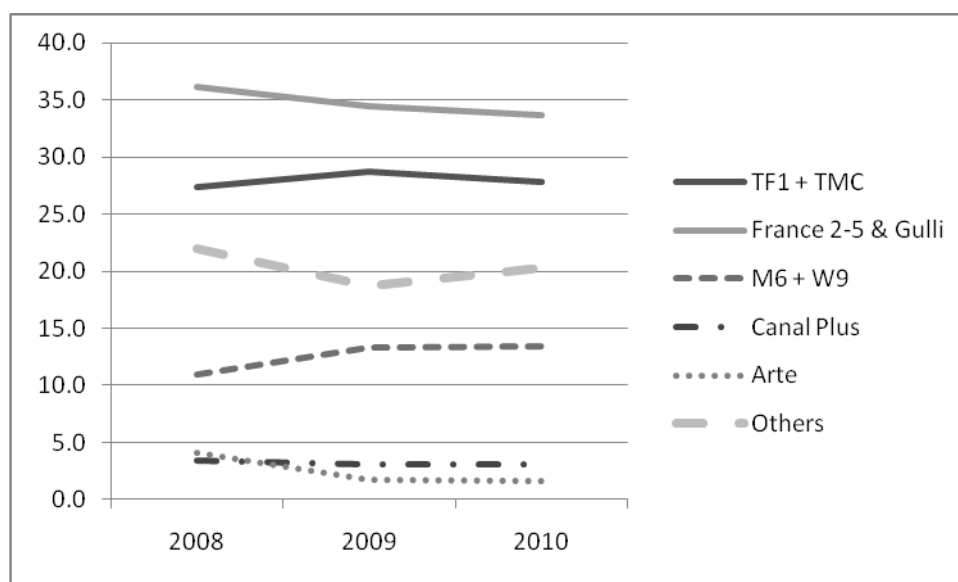


Figure 24 – Audience share of French main broadcasters including their spin-off digital channels since starting of measurement

Source: Annex 9, Table 74

Although the launch of new channels does not completely halt the general decline of the audiences of the main terrestrials, like in Britain, in France there is a diminishing importance of the 'Others' category, as it descends from the first position with a 30% level in the audience share in 2009 (Figure 22) to the third position in Figure 24 with an audience share in the region of 20%. Moreover, the 'Others' category could be even smaller if the audiences of the other Canal Plus and other TF1 spin-offs were also published. However, the yearbooks used in this research do not report those audiences.

As those breakdowns have shown, overall, the main terrestrials must still be regarded as important deliverers of broadcasting content. The era of multi-channels may have diminished the importance of the original terrestrials channels, such as ITV 1, TF1 or Globo but the original FTA broadcasters, using their portfolio of channels are still the most watched. Therefore, to include specific content obligations for the main broadcasters - a service that is still highly popular in times of digital convergence - still makes sense. It has a significant potential impact because it still reaches significant proportions of the population. Their popularity also means that, possibly, national content will reach wider audiences. Therefore, broadcasting services might still be regarded as important tools for the delivery and promotion of socio-cultural concepts, appropriate means for the distribution of national content and, not least, significant inducers of national production industries.

Before concluding on the usage of the main terrestrials for the distribution of national content, two main questions still need clarification. Does national content draw the attention of the viewers? And what kind of programmes are the most viewed? The first question will indicate whether viewers actually watch national content and therefore if national pulling policies are justifiable, in terms of public investment in a (cultural) good that society actually uses and demands. The second question will point out whether the programmes produced to fulfil the quotas, such as educational, news and citizenry programmes, are in effect watched. This evaluation will assess the efficacy of mandating broadcasters to deliver specific kinds of content for fulfilling higher socio-cultural goals.

8.6.2 The attractiveness of national content to audiences

To do a comprehensive assessment of the audience shares is extremely difficult because of the available data. There are several audience share lists that classify the most watched programmes, whether by category (recurrent programmes, such as series or soaps; or single programmes), by genre (entertainment, sports, etc.) or by period (the top of specific weeks or the most watched programmes of the year). However, none of these publicly available lists is comprehensive enough to draw a consistent conclusion on which kind of content is more popular: whether national or imported. Even so, I will attempt to draw my conclusions with the available data: ‘top ten of the year per genre’, ‘top three programmes per channel of a specific week’ and the ‘top twenty programmes of the year’.¹⁷⁰ The first obvious criticism of this analysis might be that although the ‘champions’ of the week and of the year were the most watched content at that particular moment, a bigger proportion of the population was watching other content. In fact, as we will see later on, while these audience pullers of the year achieve roughly 30% of the shares, it means that 70% of the audience were watching other programmes. Perhaps more irrefutable evidence, which could indicate more accurately the comparative attractiveness of national content, would be to take a snapshot of the nationalities of the content being broadcast under a certain period of time on all the channels at the same time. For obvious practical reasons this is not a feasible option for this research. Certainly analysing the audience’s attention based only on rankings that list a few programmes has the potential to distort a more accurate portrayal of viewing habits and preferences. Moreover, these rankings also distort the assessment of audiences’ attraction, as different genres might attract differently according to the nationality. For instance, it is most likely that an imported film will attract more attention than an imported news programme. Therefore, I will start this discussion with the analysis of the relative attractiveness of the ‘top 10’ programmes by genre, for the UK and France, as detailed in Figure 25.¹⁷¹

¹⁷⁰ As a reminder to the reader, audience figures are not openly available to the public in Brazil. One of the reports from the main audience measuring company IBOPE available to the general public is the ‘Top 5’ weekly lists for some of the major cities. There are no other freely available reports from IBOPE ranking more programmes or publishing the ‘top ranking’ programmes of the year.

¹⁷¹ No available data to include Brazil in this comparison.

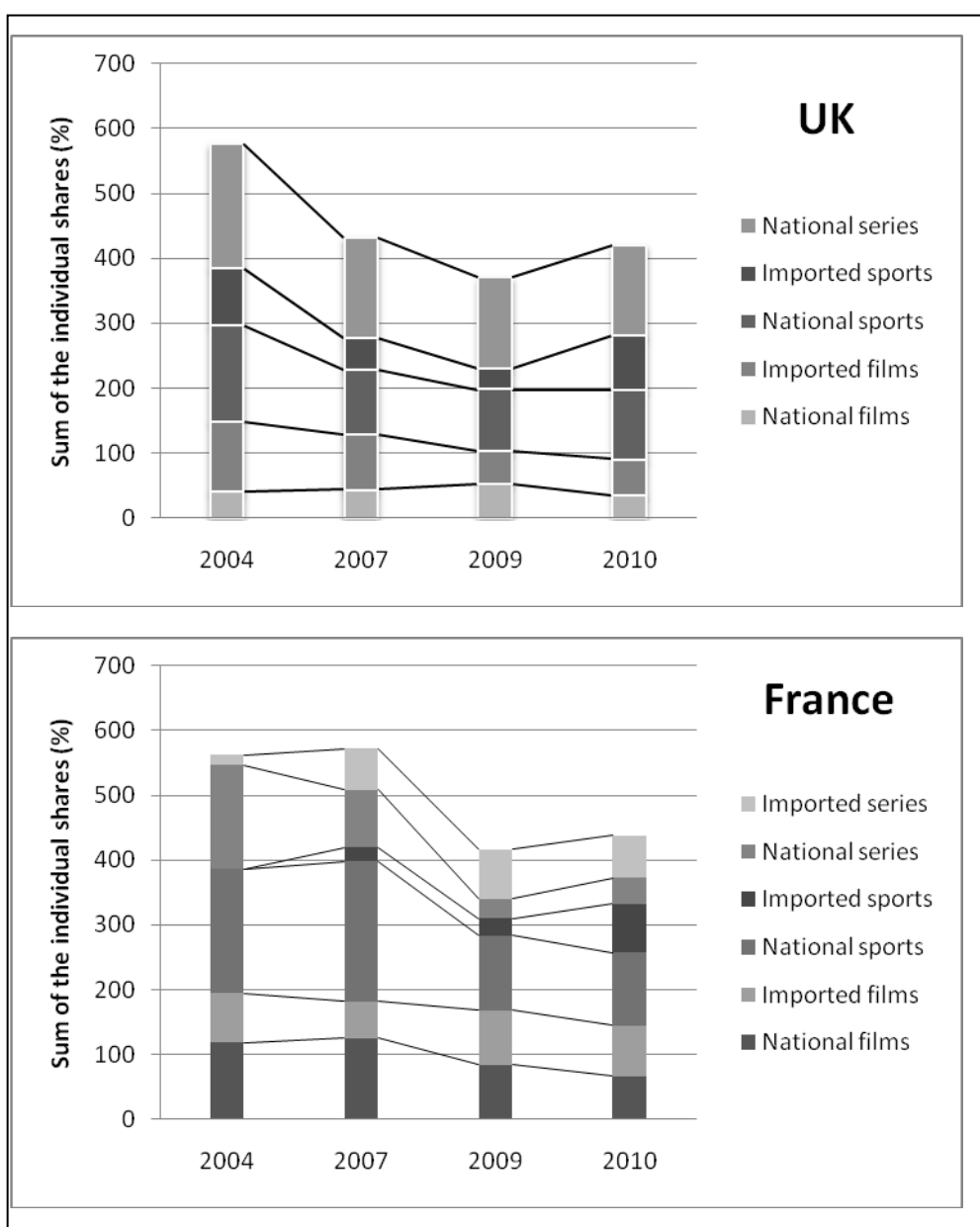


Figure 25 – Sum of the shares of the ten most watched programmes of the year per genre

Source: Annex 9, Table 81.

Notes: Adapted from International Television Key Facts yearbooks.

The graphs of the UK and France contained in Figure 25 show that, divided by genre, the relative attractiveness of national content varies. Imported content in France reaches a higher proportion than in the UK. Additionally, the genre analysis shows that national films attract more attention in France, whereas in the UK the top pullers are national series and, in both, national sports.

Hitherto those conclusions are based only on the list of the most watched programmes of the year per genre. Certainly the performance of national and imported content varies throughout the year and imported content would more certainly attract the attention of the viewers more often and in

higher proportions. Therefore, in order to give more evidence of the relative attractiveness of national content and verify if there is any significant difference in the proportions seen previously, I will now analyse the audience shares of the 'top three' programmes of each of the main channels in a particular week (theoretically the list would be more diverse than the 'top of the year' as it include programmes from all main channels). Figure 26 shows the total proportions achieved by national content of the weekly 'top three' programmes per broadcaster, extracted from the 'top 30' weekly list for the UK and France and 'top 5' in the case of Brazil (Sao Paulo).¹⁷² It is important to note that this extraction from the 'top 30' weekly list includes programmes broadcast by thirteen channels in the UK and eleven channels in France, more than only from the main terrestrials.

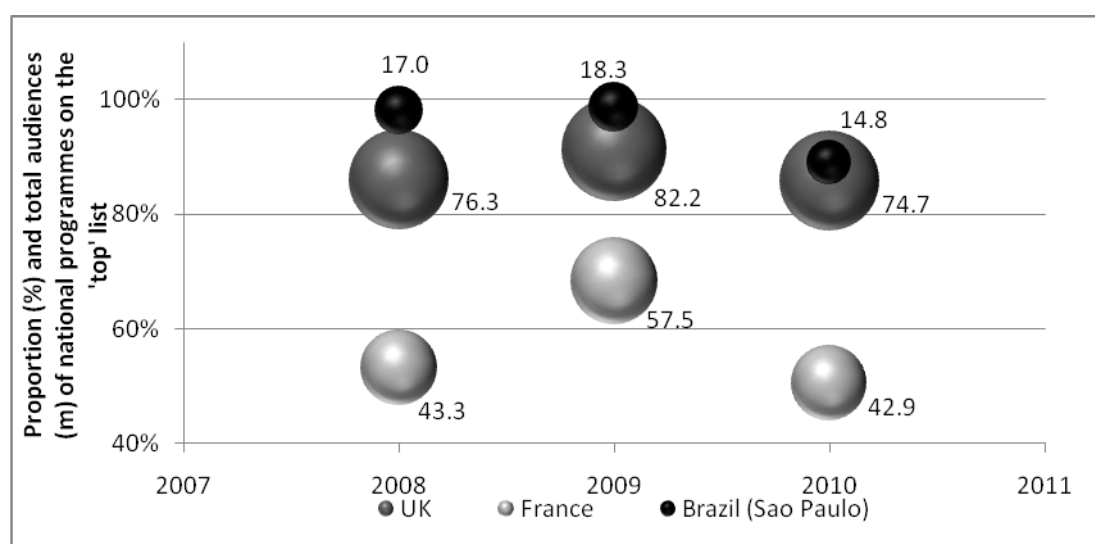


Figure 26 – Total audiences (in millions) of the three most watched programmes of the thirty most watched programmes in a specific week and the corresponding proportion of audiences achieved by national content

Source: Annex 9, Table 82.

Notes:

- UK: Adapted from Barb "Top 30 Weekly", totalling the first three programmes of each broadcaster on the 'top30' list. See Table 79 for programmes listings.
- France: Reports from Relaxnews. See Table 80 for programmes listings.
- Brazil: Used the same listings contained in Table 77 but totalling only the 'top three' programmes.

The size of the bubble indicates the total audiences achieved by the top three programmes of the week, and the vertical position corresponds to the proportion of the audiences that the national content attracted amongst the top three programmes of the week. Bubbles' positions show that in the UK and in Brazil national content was responsible for attracting the biggest proportion of

¹⁷² See Annex 9, Tables 13, 15 and 16 for complete listings.

audiences. During that period, the 'top three' programmes of each station that were nationally produced (22 programmes in the UK and 16 in Brazil) attracted the attention of 80% of the total viewers of all the top three programmes (30 programmes in total in the UK and 21 in Brazil). Whilst in France the proportion was more level, topping 50% (20 nationally produced programmes of a total of 33). The relative size of the bubble does not indicate any relevant tendency over time, which may suggest that the audience share of such small period depends more on the attractiveness of the specific content broadcast on that particular week.

As with the relative attractiveness of the types of national content that were most viewed, a closer examination of the 'top three' types of programmes also shows some differences. In order not to extend this discussion, I will focus on the year 2010 only (for the complete list of programmes see Annex 9, Table 77, Table 79 and Table 80). In the UK, 'light entertainment', such as reality TV *The X factor* (ITV) and soaps (such as *Coronation Street* (ITV)), was most present in the list. 'Light entertainment' and soaps appeared with eleven and eight titles respectively, all of them nationally produced (11/11 and 8/8).¹⁷³ The list is followed by series, such as *CSI Miami* (Channel 5) (3/6), and films (2/4). Purely educational programme appeared only once in the list (*Coast* (BBC 2)).

In France the list is more balanced towards films (6/12) and series (4/12), followed by 'light entertainment' (4/4), news and educational (4/4) and sports (1/1). In Brazil the list is dominated by 'light' entertainment (14/14), series (3/9), soaps (4/4), news (3/3), sports (2/2) and film (0/1).

Although that classification gives us some perspective on broadcasting schedules, it does not indicate which kind of content attracted the most people. Hence, adding up the audiences, soaps were watched by 40.4m of viewers and in Britain 'light entertainment' by 29m, all of these nationally produced. In France, series were extremely popular, attracting the attention of 45.8m viewers on that week (of these only 11.4m were attracted to national content), followed by films, 18.5m (10m watching nationally produced), and more closely followed by 'light entertainment' 12.7m (all of it nationally produced). In Brazil (Sao Paulo only), the domination of 'light entertainment' was, in fact, smaller, with 7.9m viewers and soaps (with only three Globo's telenovelas) attracting 5.7m and the

¹⁷³ The fraction indicates the number of national programmes in relation to the total.

three news programmes (two of them broadcast by Globo) topping 4m viewers; all of these were nationally produced.

In summary, the analysis of that particular week indicates that national soaps and reality TV shows are more noticeable in the UK and Brazil, while imported series and films attract comparatively more views in France. Educational and other programmes with social missions were rare amongst the most popular in France and in Brazil. However, it must be pointed out that in the UK there are programmes in the list that were classified as entertainment but have embedded social values. Additionally there are other programmes that I might have classified as entertainment but that include citizenry issues.

Where the relative attraction of national content varies according to the genres amongst the analysed countries, the popularity of football shows the most similarities. Analysing another set of rankings, the list of the 'Top 20 of the year' (see Annex 9, Table 75, Table 76 and Table 77) shows that audiences are more attracted to football matches when a national team (or club) is involved.¹⁷⁴ It is important to mention that in this analysis I classified football matches as national content only if a national team (or club) was involved. Moreover, as an additional point of clarification, I would like to note that the list compiles only the top ranked episode of recurrent programmes. Therefore, there are no title repetitions on the 'top 20' rankings.¹⁷⁵

In Britain, in 1998 (year of a World Cup), 2004 (European Cup) and 2010 (World Cup), football matches involving national teams (or clubs) attracted more than those without national teams (4/7 (four times in seven occurrences), 4/5 and 4/6 respectively). A similar preference in France was also observed. For Brazil, as the selected week (first week of September) does not include any major football events, the effect was not noticeable. However, as already discussed in Chapter 5, the same levels of ratings could also be expected in Brazil, as well. In fact, the last match Brazil played in the 2010 football world cup drew the attention of 45% of households (IBOPE, 2010).

¹⁷⁴ I use the term national team (England, France, etc.) as opposed to national club (in England, for instance *Arsenal*, alternatively, in France, for instance, *PSG*).

¹⁷⁵ All programme titles can be verified in the tables in Annex 8.

Three other kinds of content that appeared in the ranks contained in Table 75, Table 76 and Table 77 of Annex 9 are worth commenting on: politics and news; soaps; and films. In tune with the considerable regulatory effort, in France programmes related to news and politics appeal to the public. News programmes also draw major attention in Brazil and, in both countries, substantially more than in the UK. While in Britain news reached, at a maximum, the 20th place, in France they reached the 8th place, on average, (and the discourses of prime ministers and presidents can also fetch a position in the 'top 20'), and in Brazil the 2nd or 3rd places. Important to notice that, while in France and in Brazil there are dispositions for the coverage of politics and news, in Brazil Rede Globo managed to create from their daily evening news, *Jornal Nacional* (or as Globo usually refers to the 'audience champion'), an influential opinion maker.¹⁷⁶

Soaps (and telenovelas) are also an important ingredient of television. In Brazil they are certainly top audience pullers with consistent figures throughout the period analysed. In the UK this kind of programme, is also an attractive content, still according to the 'top 20' of the year, only losing to football and, in 2009, to the reality shows *Britain's Got Talent* and *The X Factor*. In France national soaps are not as popular as attention is mainly divided between series, imported (*Dr House*, *CSI*, *Criminal Minds*, *Mentalist* and *Grey's Anatomy*) and national (*Navarro*, *Zodiaque*, *Une Femme D'honneur* and *Clem*), and feature films (discussed in more detail below). The understanding of the reasons why these kinds of programmes are so popular is beyond the scope of this thesis.

However, it is important to remark that while these are entertainment programmes and not originally produced for the fulfilment of specific content quotas, such as citizenship or educational, they can be expected to be highly culturally relevant if produced locally. It may be argued that if *Eastenders* (BBC 1), *Coronation Street* (ITV), *Passione* or *Caminho das Indias* (both produced by Globo) were imported, or depicted foreign stories of everyday life, they would not be as popular. In fact, in 2010, there is only one imported soap, *Neighbours* (Australia), in the top list of the three countries and only occupying a meagre last position, in the least viewed channel, Channel 5.

The third category of programmes worth remarking on by the audience shares' figures is film. Again, as expected from the structural regulatory effort for the promotion of the national film

¹⁷⁶ See for instance Chapter 5 when the repercussions of the debate between Lula and Collor in the presidential debate for the 1989 elections were discussed.

industry, and also confirming the country's preference for films, they achieved several times the top rankings in France. On those selected years there were, in total, thirteen national films and nine imported films on the 'top 20' list. In the UK, on the contrary, there were only two national films and one imported. In Brazil, nine films were listed in the 'top 5' list. Although it is not possible to identify the origin of the films, a report from Brazilian cinema agency, Ancine (2011a: 23), informs that almost 90% of the films shown on television are imported. Therefore the probability of these films being national is low.

As already mentioned, because of the lack of diversity in terms of genres, and also of broadcasters (it is extremely difficult for less viewed channels to achieve a position on the top list of the year), probably, the 'top 20 of the year' list is not the most adequate way to understand audiences' preferences. However, the 'top 20' list shows the power of national content to attract the biggest audiences, and hence to be, potentially, the most bonding content. The following Table 15 shows the proportion of the audiences attracted to nationally produced programmes amongst the most watched programmes.

Table 15 – Proportion of national content shares amongst the top programmes of main channels in the UK, France and Brazil (Sao Paulo)

	1998		2004		2009		2010	
	All prog.	Non football prog.	All prog.	Non football prog.	All prog.	Non football prog.	All prog.	Non football prog.
UK	82%	92%	96%	100%	100%	100%	90%	100%
France	82%	74%	80%	100%	44%	38%	62%	75%
Brazil	n. a.	n. a.	70%	68%	79%	77%	100%	91%

Source: Annex 9, Table 78.

Note:

- UK and France: Index resulting of adding of the audiences shares (in %) achieved by the 'top 20' programmes in the country;
- Brazil: Total audience (in millions) achieved by the 'top 5' of the main broadcasters in the city of Sao Paulo only (the biggest metropolitan region of Brazil).

Table 15 indicates the high attractiveness of national content in all the countries of this case study amongst the most watched programmes of the year. In order to eliminate possible distortions caused by football programmes, Table 15 separates the audiences in two different columns, one including all programmes and the other excluding football matches. Of these most viewed programmes of the year, a high proportion of that content was made locally in both cases. There

are other tendencies depicted in Table 15 too. Contrary to what would be expected from the previous discussion of Figure 22 (decay in the audience share of the main terrestrials) and the long-tail phenomena enabled by digitalisation, the increase in competition did not affect the performance of national content as the most viewed programmes of the year. From 1998 to 2004 (i.e. before and after DTV) the relative attractiveness of national content amongst the most viewed programmes of the year remained relatively constant in the UK. The same pattern was not followed by France though. After the launch of DTV, audiences switched more substantially to imported content. In 2009, Table 15 clearly indicates a significant drop in the relative attractiveness of national productions. However, in 2010, users were attracted back again to national content. This apparently cyclical pattern is similar to that experienced by Britain in previous decades, as remarked by Rixon (2006: 50-2).¹⁷⁷ Unfortunately, there is no data for the late 1990s for the Brazilian case.

At this point, it is important to comment on formats. A closer analysis of the programmes' titles shows that, at least in the countries studied here, the usage of imported formats does not add a significant proportion of audiences.¹⁷⁸ This finding complements suggestions of academics, such as Chalaby (2010), who notes the predominance of Britain in the exports of formats and Esser (2010), who suggests that formats play a crucial role around the world. It is undeniably the commercial success of British formats, in a global industry that Chalaby (2012) remarks is worth almost £3 billion a year. The reasons for that proliferation are beyond the scope of this thesis (see for details Chalaby, 2010, 2012; Esser, 2010; Kunz, 2010; Moran & Keane, 2004; Waisbord, 2004). However, the findings suggest that imported formats, as they usually are 'light entertainment', do not have a consistent power to displace other national content from the list of the most watched programmes yet. One reason may be that some of those programmes are not culturally relevant, and therefore do not attract as much attention as a programme originating from national culture. Certainly there are other preferences and countries' particularities which I do not intend to address in this short section, and there will always be the "nobody knows factor" alluded to by Grant and

¹⁷⁷ According to the author, from the 1960s to the early 1980s there was an increase in American imports, which again declined in the 1990s.

¹⁷⁸ In the case of the UK, only one imported format (*The Apprentice*, USA) achieved a position in the 'Top 20' ranking. *Survivor* (UK) in the case of France. In the case of Brazil: *Esquadra da Moda* (*What not to wear*, UK), *Idolos* (*Idols*, UK) *Polícia 24h*, *CQC* and *A liga* (Argentina). All programme titles can be verified in Annex 8.

Wood (2005: 48-9). Arguably, 'light entertainment' produced from imported formats might achieve a bigger preponderance as top audience pullers, in countries where national broadcasters have not developed a strong content genre and identity of their own. Nevertheless, it must be pointed out that a longer time span analysis is needed in order to be more certain about the importance of imported formats.¹⁷⁹

Those findings about formats do not mean that within the most watched programmes there are no national formats being watched. However, a closer look at the lists of the programmes listed in Table 75, Table 76 and Table 77 of Annex 9 shows that reality shows and formatted programmes, in our case studies, are only 'top hits' in the UK. While in 1998 there were the originally British formats *Who wants to be a millionaire?*, *Stars in their eyes* and *You've been framed* in the top list, totalling over 90 million viewers, in 2010, the list changed to other British formats, *The X Factor*, *Strictly come dancing*, *Britain's got talent* and *I'm a celebrity...* reaching almost 100 million viewers. On the other hand, in France there are no reality shows in the top list of the selected years except for *Survivor* (UK) in 2009. Coincidentally or not, as noted in Chapter 7, those kinds of programmes are denied public subsidy from the Cosip in France.

In Brazil, formats appeared later on. In the selected week of 2009 in 8th (*Idolos -Idols*, UK) and 16th place (*Esquadrao da Moda -What not to wear*, UK) and, in 2010, in the 11th (*Idolos*), 15th (*Policia 24h*, Brazil), 18th (*CQC*, Argentina) and 19th (*A liga – La liga*, Argentina) positions. The comparatively weak results in Brazil may be attributed to the fact that none of those formats were aired by Rede Globo, which still relies on the more traditional genre of *telenovelas*.

Having discussed audiences' behaviours and preferences, the chapter, heading towards the conclusions, brings to a close the third and final step of this research, the market assessment.

¹⁷⁹ There are other difficulties worthy of mention when identifying formats. A national programme may be 'based on' or 'inspired by' a known format and not licensed. Some formats are segments within programmes, such as afternoon shows, and, as such, segments do not appear in TV listings. For instance in Brazil, *Maratoma do Faustao* (*Wipeout*, USA) is a segment of *Domingao do Faustao* a programme produced by Rede Globo.

8.7 Conclusions

The market assessment conducted in this final part of the research looked into audiences, producers, broadcasters and telecommunication and ICT companies. While the first step of this research identified the socio-cultural concepts and goals contained in broadcasting regulation, the second step examined the regulatory tools for the production and distribution of national content. This third and final step was aimed at the identification of the possible impacts of these regulations on the development of the different activities of the audiovisual industry and on audiences.

From the perspective of the development of the production industries, the obligations for financing and distributing national content have considerable economic impact when substantially applied. The UK and France have strong independent production companies in conjunction with a well developed film production industry. Albeit in Britain the independent sector is more prominent, whilst in France it is the film industry. Brazil, as a result of an excessive concentration on the means for the production of content and small obligations, has weak results, with the only relevant (in the global scenario) national producer of content being Organizacoes Globo.

The market assessment has also shown that while strong regulation helps to develop a healthier and a more diversified range of national industries, the internal economic wealth does not necessarily imply successes in exports. The UK was the only country of these cases studies where foreign trade was substantial. The analysis has shown that the UK's achievement, as far as trade is concerned, is anchored not only in fewer cultural discount factors, above all the language, but also in attracting inward productions (mostly from the USA) and in developing formats.

Furthermore, the research suggested that in times of digital convergence, telecommunication providers and paytv companies are relevant competitors for the distribution of audiovisual content. Moreover, their cash generating power is also substantially higher than that created by the TV license or advertisement. As they distribute more foreign content, which contributes negatively towards the balance of trade, and divert viewers from the main regulated channels, there is a justification to impose a financial compensation on their revenues to balance the loss of income generated by those services. For the same reason, a contribution taken from the ever increasing

sporting rights contracts, which also help increase the revenues of paytv companies, could also be imposed.

Still with regards to distribution technologies, regulators should give more attention to free-satellite services, as they attract considerable fractions of the audiences, especially in rural and remote areas and amongst diasporic populations. In the Brazilian case it is even more important as broadcasters are competing for the attention of viewers and generate revenues without being explicitly licensed.

This chapter also indicated that the internet will, most certainly, increase in popularity, whilst paytv may not necessarily do so. This research does not propose any alternatives for regulating the World Wide Web. However, some form of financial contribution from local operations could be introduced for the same reasons as in the paytv activity and with the same final objective, to strengthen the production of national content. Nevertheless, I also pointed out that such a volatile and borderless fast changing environment has a high probability of jeopardising any form of enforcement.

When analysing audience behaviour and preferences, this chapter has shown that national television content and national broadcasters still play a significant role in attracting the attention of considerable proportions of the society. From the perspective of audiences' interests, the research has shown that the obligations on broadcasters, and especially on the main terrestrials, are still important ways of securing production means and of distribution of national content, while the fulfilment of the socio-cultural objectives of diversity, plurality, democracy, citizenship and cultural relevance is not so evident.

This chapter ends the second part of this thesis, the three case study countries. Based on the lessons of this investigation I will now head to the conclusions of this comparative media research.

CONCLUSION

THE PURPOSE OF THIS RESEARCH IS to understand the regulatory frameworks implemented in the recent years in the UK, France and Brazil for the promotion of nationally produced audiovisual content. My argument is that because communication services have both socio-cultural and industrial implications, governments and societies desire guiding principles for the promotion of nationally produced content.

As this research has shown, since the 1980s broadcasting and the other audiovisual media services have undergone, albeit with different intensities amongst countries, at least three transformative moments: liberalisation, digitalisation and the ongoing digital convergence. Each of these changes had different implications for the production and distribution of national content. Most importantly this includes: the increase of competition for traditional broadcasters; audience fragmentation; and new opportunities for the distribution of content. Moreover, as a result of the current coexistence of national, international, public and private media owned by broadcasters or more 'convergent' telecommunication groups, the regulation for the promotion of national content is becoming extremely intricate. Policy stakeholders have to accommodate in regulation the fulfilment of socio-cultural objectives, support for national broadcasters, development of local production industries, and the promotion of competition and viewers' interests.

In this research I combined policy analysis with a market analysis of each country's television-landscape. The comparative approach allowed me to identify different perspectives and regulatory approaches to similar problems encountered in media regulation, and led to new understandings of particular policies, such as media ownership or the promotion of diversity. The exploration of market data, complementing the policy analysis, enabled the identification of effective policies for the promotion of national content. The latter analysis also improved understanding of the impact of

the different regulatory tools and approaches on the various activities involved (i.e. production, programming, distribution and viewers).

Ideally, elite interviews would have complemented the regulatory analysis. These interviews would have brought different understandings and insights about the negotiation processes and objectives of particular rules provided in regulation. Interviews with policymakers from Britain, France and Brazil also could have revealed aspects that need better regulatory attention, and they could have corrected possible miss-interpretations of socio-cultural objectives or of targets and the effects of certain regulatory tools. However, within the timeframe of a PhD course, it would have been extremely difficult to design and conduct interviews with a balanced and representative sample from each of the three countries. As a result of the time restraint, the amount of legal and regulatory documents that needed to be analysed for the three countries and the human resources available, conducting interviews for this research in addition to the policy and the market analysis carried out, unfortunately, was hence not feasible. But the work provides a context which could inform later work utilising in-depth interviews.

The exclusive document analysis approach to my research no doubt had drawbacks. The analysis has only one perspective, that of the researcher. The resulting potentially 'narrow'-interpretation may have jeopardized the identification of further important tools or objectives in regulation and led to miss-interpretations of the targets or effects of certain regulatory requirements. Additionally, as mentioned in the methodology chapter, besides the regulatory drive there are other factors which directly affect the production levels and viewing shares, such as overall economic growth, exchange rate and the relative success of certain types of content. To attribute those changes to regulation alone might be considered overly simplistic. To minimise these possible inaccuracies a market analysis was included to the research. The idea here was that changes in regulation affect industrial activities and viewing shares. Therefore, by replicating the regulatory and market analysis on three different countries throughout all the period of study helped to improve the identification of the possible effects of the regulatory tools under study.

Main analytical findings

The comparative analysis has shown that the regulation for the promotion of national content has both similarities and differences in the three case study countries. Moreover, because of the dual (socio-cultural and industrial) characteristic of audiovisual content, regulators more than often struggle to find an optimum balance. In the UK there is a bigger concern in sustaining diversity of broadcasting services, in promoting competition (in communication services overall), and in attracting foreign investment in cinema production. Diversity is promoted through comprehensive content obligations for all traditional broadcasters and by stipulating a considerable proportion of independent productions on broadcasting schedules. Competition amongst services, too, is promoted. The adoption of multiprogramming on DTV enabled the free-to-air service to be a competitor to paytv systems and channels are to be made available to the different distributors on fair and reasonable terms. Cinema production achieves strong production figures by attracting inward investment from overseas. The tax relief included in the legislation for that activity can be regarded as too focused on attracting these kinds of big budgets.

In the case of France, this research suggests that the promotion of national content is too focused on cinema production and on the promotion of national culture and language. Broadcasting and telecommunication services, home-video distributors and cinemas, are all required to divert funds towards the production of audiovisual content. But most of this funding (administered by the CNC through the Cosip scheme) goes towards supporting film production. This French 'structured financing system' is often criticised for being too biased towards cinema production and big national media groups.

The difference in broadcasters' content commissioning practices between the two European countries is that in the UK the only legal obligation is the independent quota (and British broadcasters commission even more than the stipulated amount). In France, there is a smaller quota for independent production but there are legal *contributions*, i.e. levies, in place. Set as percentages of broadcasters' revenues, the *contributions* have to be invested in independent productions. There are explicit regulatory prescriptions dictating the amount of revenues that shall be spent on films and other types of programmes. With regards to DTV, France also digitalised in

recent years and, as in the UK, more channels were given to the PSB in order to increase the presence of national content in the newly expanded services. By this approach, at the same time that more channels are open to the public, policymakers in both countries rely on the PSB for increasing the amount of national content on the screens.

Brazil is perhaps the country where the concern with the promotion of national content is in the most early stages. That might be due to the fact that the traditional terrestrial broadcasters historically rely on in-house productions and paytv was, until the last couple of years, a timid competitor to the free commercial broadcasters. However, although the main terrestrials managed to block the adoption of multiprogramming, freezing the number of competitors in DTV, paytv is steadily increasing subscriber numbers (diverting the desired affluent audiences away from the traditional FTA broadcasters). This may be due to the recent changes in legislation which liberalised foreign ownership to those services. Most certainly, a possible rise in the viewing shares of international channels may raise the awareness that further protection is needed for the promotion of national content on television services overall. Another characteristic of the Brazilian mediaspace is that it is too concentrated on the companies related to Organizacoes Globo. Cinema production follows the same pattern. Apart from one big national producer, Globo Filmes, the national industry is restricted to small and authorial projects. One of the reasons for this monopolistic situation is that Brazilian regulators do not have supra regional agencies, which could help enforce competition and deverticalisation. Besides, there are strong ties between commercial broadcasters and politicians. As a result, the market is too concentrated on commercial broadcasters. The national content is promoted only to satisfy commercial needs, although highly culturally relevant, with a small stake from independent production. The PSB, as a complementary alternative, is not adequately funded and their share of the production and distribution of national content is very limited and mainly focused on the objective of promoting citizenship.

In contrast to Brazil, European countries, most notably the UK, have encouraged the empowerment of independent producers to create a supportive environment for the production and distribution of national content. However, my research has also suggested that the focus on independent productions have diminished the strength of broadcasters, especially in Britain, which, in turn, has

resulted in a decrease in the funds available for commissioning new content. In order to help re-balance this situation, a re-definition of what constitutes independent productions should be introduced. In this respect, I would like to suggest that well established broadcasters and studios from other countries should not be considered as independent producers just because they do not directly own broadcasting channels in the country concerned. The definition of independent production should be changed in legislation; the overall global financial strength should be taken into consideration when establishing whether a media producer is independent or not. I will return to this again later, when summarising my recommendations.

Equally important in regulatory attempts to sustain and support national production, with associated socio-cultural and industrial objectives, are the problems of paytv buying up sporting rights. Although the three countries regulate these deals with different intensity, as discussed in Chapter 7, in all of them paytv now continuously secures these national championships. This process directly increases media concentration, as these annual events are big audience pullers and the difference in market power between broadcasters continues to increase due to these transmissions. As the economic resources for the production of content is becoming more concentrated, the production of diverse national content and plurality in distribution is hence hampered. The sporting events should, thus, be considered as an important source of funds for national content production and a regulatory remedy for the concentration of revenues should be introduced. I propose a levy on sporting exclusivity deals which could feed the production of nationally produced content, possibly to be used by 'truly,' re-defined independent producers.

In line with this discussion of the effects of media concentration on the production of national content is the debate on digital convergence. With this process, financially strong ICT and telecommunication companies are starting to compete with national broadcasters for the attention of viewers, posing a new challenge for the production and distribution of national content. The new distribution technologies divert viewers and revenues from traditional broadcasters and hence should also contribute with funds to the production of national content. This contribution, already adopted in France, should take into consideration the different financial strengths of the various services. In particular, paytv platforms, which are the largest distributors of imported content (by

broadcasting international channels), make a significant contribution to the negative trade balance. Taxation on that economic activity seems appropriate and justified. Additionally, the local operations of relevant internet companies should be included in the role of financiers of audiovisual production. It is highly likely that ICT companies will have increasing importance in audiovisual production and delivery in all three countries.

To summarise, the promotion of national content in current times has different challenges. The problem is embraced by the three countries with diverse approaches and regulatory tools. However, due to the dual socio- industrial characteristic of audiovisual media products, regulators more than often struggle to find an optimum balance. To support the development of a healthy audiovisual industry, which can supply all services with national content that also fulfils socio-cultural objectives is not easy. I believe that at the heart of the problem of how to develop the national audiovisual industries in this dual respect is the definition of national content.

A new definition for national content

In my work I argue that the definition of what constitutes nationally produced content needs special attention from regulators and to support my claim I would like to briefly bring back some of the thoughts discussed in Chapter 1.

Drawing on the arguments sustained by Price (1995: 35-6), Murdock (2000: 55), Debrett (2010: 16-19) and others, broadcasting should be considered a vital part of the public sphere, and as such needs to reflect and give opportunity of representation and of expression to all segments of society. Consequently, it is legitimate to consider that nationally produced television content should foster the promotion of socio-cultural values. If television is not required to contribute to supporting the healthy development of our societies it is more likely that the schedules will be mainly filled with mainstream programmes, or 'more of the same' as many scholars have noted. This can happen even if regulation assures that the content is nationally produced.

My argument, hence, is that the objectives of developing national audiovisual industries and the support of socio-cultural goals need to be linked more strongly. In my view, 'national content'

should not just be about the location of production or about the people working on it but it should also comply with explicit socio-cultural objectives if it is to benefit from legal schemes and receive public subsidies. My research has supported Ostergaard's claim (1998), that the way national content is defined by the current 'cultural tests' set by European regulation mainly serves an 'industrialist' approach (and by contrast, Brazilian regulation almost disregards these 'industrialist issues'). What seems to be more important, in my view, is to use public subsidies to support national cohesion, social life and wellbeing. This research has shown that policymakers have already included in broadcasting legislation the important socio-cultural objectives of supporting diversity, plurality, democracy, citizenship and cultural relevance. It is the task of regulators to incorporate those objectives into a more balanced set of dual socio-cultural and industrial obligations for broadcasting services. The fostering of content with socio-cultural objectives could be achieved alongside the development of strong audiovisual industries and the strengthening of national economies.

One possible criticism of this linkage between socio-cultural goals and the production of national content is that it could be regarded as ineffective as the resulting content may achieve only poor audience ratings. Moreover, the link could be seen as ineffective as viewers, it is assumed, only reflect on and assimilate content that they identify with and that they are truly interested in. However, there are several examples of audiovisual works with socio-cultural and educative concepts that were/are successful with audiences, such as Globo's telenovela *Mulheres Apaixonadas* that treated the theme of alcoholism and BBC's *Eastenders* which has storylines which include domestic abuse and sexuality issues. Although these examples indicate that these kind of contents are already being used it does not make my argument invalid. Firstly, my second example is an influential, much loved programme provided by a public-service broadcaster. Secondly, at the moment that more content is needed to fill the 'digital waves' and television audiences and societies, more generally, are becoming more fragmented, there are fewer public resources available to promote social cohesion and support democracy. Public monies and services should be used for this.

Another possible criticism to this linkage between national content and socio-cultural goals may be the association of this policy with excessive governmental interference or even to censorship in an extreme case. However, that is not the case. I am not suggesting a ban on content that does not promote socio-cultural goals. What I am suggesting is that if society still agrees that broadcasting services should fulfil socio-cultural goals, which the analysis of the regulation performed in Chapter 6 has shown is still the case, then, national governments should focus on financing and supporting the production of programmes supporting diversity, plurality, democracy, citizenship and cultural relevance. Hence, a new definition of national content, including a re-balanced analysis of socio-cultural concepts is needed.

The discussion thus far has shown the complexity and contemporaneity of the theme of this thesis, how to use regulation for the promotion of national content in current times. I have also started to highlight some issues that, in my view, need better attention from policymakers and regulators. I want to end by summarising some policy recommendations.

Policy recommendations

As pointed out during this discussion, the research conducted identified four aspects of regulation related to the production of national content which could be better addressed, considering the current scenario of digital convergence. These are my recommendations:

a) A re-definition of national content taking into consideration socio-cultural aspects

As discussed in this conclusion, in order to better fulfil the socio-cultural goals of broadcasting services the regulation for the assessment of the nationality of the content should be more balanced towards diversity, plurality, democracy, citizenship and cultural relevance, especially for receiving public financing. The 'cultural tests' should not be mostly orientated towards industrial aspects as it is currently the case.

b) Levy on services capable of delivering audiovisual content towards the production of national content

Because the internet and different telecommunication services are increasingly distributing audiovisual content, it is important to include these new services into the broadcasting regulatory sphere in practical terms. It may be argued that the fluidity of the internet could jeopardize regulation on that field or that mobile phones are services devoid of social obligations. However, as the copyright campaigning against illegal downloading has proven, regulators embraced the regulation of new services when prompted by market forces. Therefore, the inclusion of some level of obligations (for instance content obligations and funding), at least for relevant 'web' or 'mobile'-broadcasters, should start to be considered.

c) Levy on exclusivity deals supporting the production of national content

Distributors making exclusivity deals should also contribute, through taxation, towards the production of national content with socio-cultural values. The money thus raised could be used by both independent producers and national broadcasters producing or commissioning programmes. Because the exclusivity of sporting events diverts viewers and revenues from free-to-air services (largest producers and distributors of national content) to paytv operators (largest importers of content), this levy would help re-balance the financial resources available for the production of national content and act as a remedy to the effect on media concentration.

There is another crucial point related to the broadcasting of major events as pointed out in Chapter 7.4, which justifies this regulatory action. As these events are extremely popular, they have important implications for a channel's visibility and brand-building (not least vital for PSBs), which is paramount for sustaining strong national broadcasters in competitive markets. Therefore, this remedy could help to create other types of attractive content which could underpin traditional broadcasters in times of multichannel platforms.

d) Re-definition of independent producers

In markets with well-developed and consolidated independent producers, as in the case of the UK, regulators should re-assess the rules of what constitutes independent production.

As discussed in Chapter 8, 'super-indies' related to transnational broadcasters (such as *FremantleMedia* owned by Bertelsmann) or other majors cannot receive the same regulatory treatment given to small businesses (or the small 'crusaders', in the words of Ellis (2000: 151-2)), only because these groups do not act as broadcasters in the country considered. Criteria to establish whether a producer can be considered independent should consider the global interests and connections of the producer in question and not only if the company is related to a national broadcaster, as is currently the case. The special treatment foreseen in regulation should promote plurality, diversity and economic growth, not media concentration and transferral of resources from national broadcasters to other well-established media groups.

Alongside these policy recommendations, the three step analysis conducted in Part Two enabled the creation of a regulatory toolkit for the promotion of national content, which is useful for policymakers, regulators and scholars of the media political economy and regulatory field. My toolkit builds up from the "cultural tool kit" proposed by Grant and Wood (2005: 153-6), listed in Chapter 3.7 and further details the general concepts outlined by those authors. My contribution also draws on Lee's (2009) study which was limited to the quota aspect. The seventeen tools which compose the kit may be classified under the following seven groups: i) access and DTV rules (dealing with issues of access, coverage, multiprogramming, set-top boxes and EPG); ii) quotas (national and regional, independent productions, specific programmes and the definition of nationality); iii) ownership (nationality and limits to concentration); iv) broadcasting rights (listed events, secondary rights); v) financing (levies and public financing); vi) internet and non-linear services; and vii) cinema (distribution and exhibition). As it would take up too much space to provide the whole toolkit here, the toolkit has been placed in Annex 1. It includes a detailed discussion of the regulatory purposes and effects of each tool.

Concluding remarks

The intricate regulatory framework related to the promotion of national audiovisual content proved to be a challenging field of research. The method of research here utilised, the resulting findings and the regulatory toolkit detailed in Annex 1 are valuable contributions to knowledge, which could

be used by policy scholars and regulators in different countries involved in the process of designing and analysing media policies. As an additional contribution, the original and up-to-date comparative panorama of the broadcasting services in Brazil, France and the UK offered (Chapter 5) has indicated the differences and similarities between the television-spaces of the three countries. The investigation has highlighted that, on the one hand, in today's world, television in countries as diverse as Brazil and the UK, have several aspects in common, such as coexistence of national and global players, and terrestrial and multichannel systems. Moreover, different agents with varied objectives and interests produce and distribute audiovisual content in each country. On the other hand, the research has also shown that countries have several lessons to learn from each others' successful experiences, such as the development of the independent production sector in the UK, the French structured financing system and the generation of the highly valued and culturally relevant genre of *telenovelas* in Brazil.

Finally, this comparative media research on the regulation for the promotion of national content in digital times has raised some interesting points that should be expanded by further research. A rethinking of which are the main desired socio-cultural goals of broadcasting services, and the consequent proposal of new objectives and tools adequate to digital and convergent times are one possible field of research to be pursued. This additional perspective is important, considering the complexity and relativity of the concepts explored in legislation. Elite interviews with policy makers may prove useful here. Another area that could be examined in more depth would be the study of different media models, particularly in current times. This requires a complex and multidimensional analysis, which was not my major focus of attention. Media models are important for a deeper understanding of *mediascapes* and for identifying future trends. To study in more detail the different media systems models' of this and any other set of countries would no doubt be of value to media scholars. Related sectors, such as home-video and mobile TV, which are increasingly becoming part of the audiovisual industries, are important. Research on these growing segments would identify new relations and forces affecting the promotion of national content. Finally, a longer time span and additional countries, which could bring new understandings of the implications of certain kinds of regulations, is another important area that research could expand to. These are only a few of possible and interesting fields of further study which I neither had the time nor the space in this

thesis to explore. These aspects suggests that even in digital times of audiovisual abundance, regulation still drive broadcasting services and audiovisual activities and still needs to be studied in order to contribute towards the development of healthy societies and national industries.

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ANNEXES

ANNEX 1 – A REGULATORY TOOLKIT FOR THE PROMOTION OF NATIONAL CONTENT

This annex is a contribution to policymakers and scholars for the identification, analysis and possible adoption of regulatory tools - mainly focused but not limited to broadcasting services - for the fostering and development of national content.

Because the different rules often apply to more than one activity (distributors, broadcasters and producers) the annex will be arranged by the type of rules analysed in this research. Thus, the sections will be arranged in the following order: access rules and DTV; quotas; ownership; broadcasting rights; financing; internet and non-linear services; cinema distribution and exhibition. I would like to clarify that although the cinema industry was only tangentially addressed by this research, there are few regulations discussed in this research that are worth mentioning at this stage. For each regulation there will be a brief explanation of the mechanisms involved, a comment on the implications for each activity (including viewers and national governments) and references to existing regulations. At this point I would like to note that the regulations here referred to were already discussed in this thesis in Chapters 6 and 7 and their summary is available in Annex 5. Additionally, I would like to remark that this research did not focus on competition rules and on competition legal framework.

Before starting with the overview of the tools that can be used in a regulatory toolkit for the promotion of national content, Figure 27 shows the application range of the different types of regulations here suggested.

Figure 27 shows that there are different kinds of broadcasters and distributors, and regulators should bear in mind that the framework should target those agents accordingly. Figure 27 also indicates the overlapping reach of the regulatory rules that will be discussed, meaning that rules might either apply to more than one single activity or might regulate the interactions between them. Although consumer electronics, video-games and home-video are increasingly inter-related sectors with the production of content, those were not analysed in this research but were included in the figure as reminders of their interaction with the production and distribution of content.

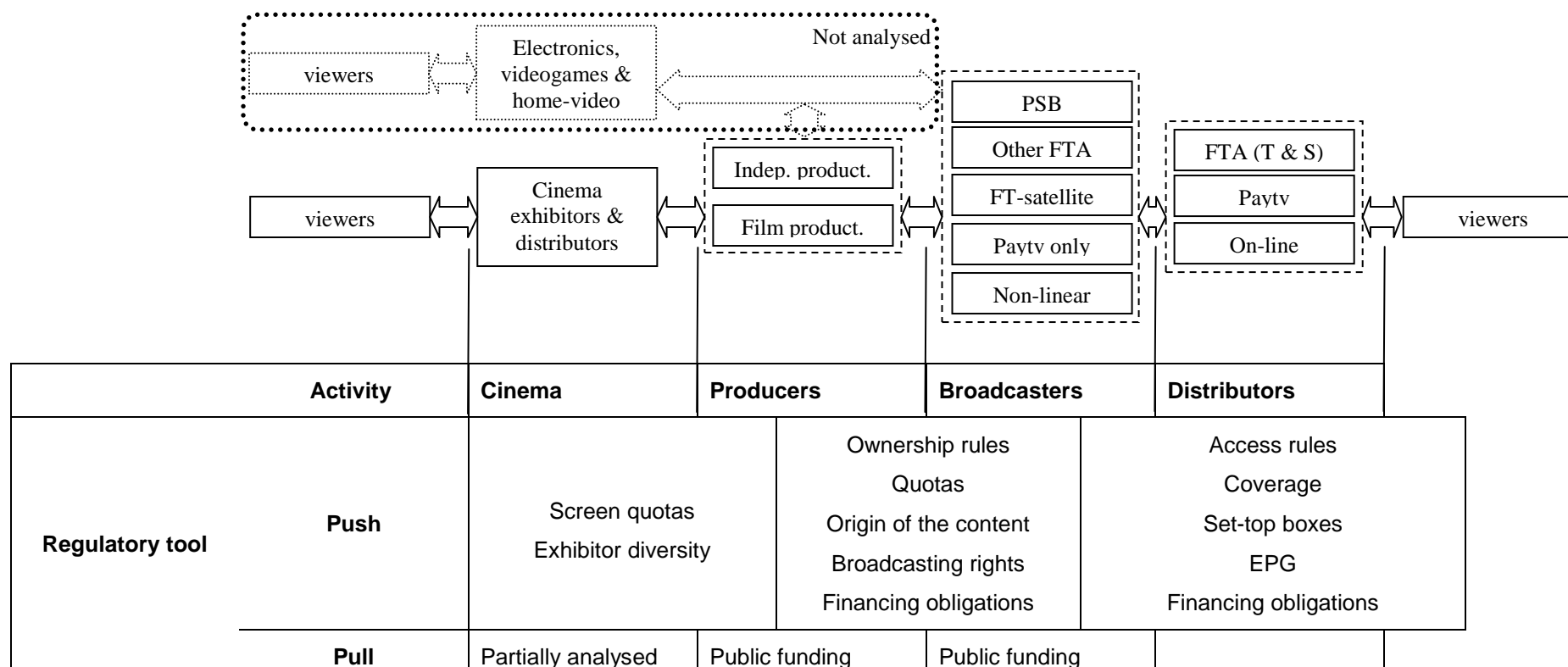


Figure 27 – Different regulatory tools per involved activity

Notes:

- Broadcasters: 'PSB' (all channels of the Public Service Broadcaster); 'Other FTA' (all other terrestrial channels available to the public without subscription); 'FT-satellite' (all other satellite channels available to the public without subscription); 'paytv only' (channels available only to subscribers in any distribution platform); 'non-linear' (paytv channels available in catalogues).
- Distributors: 'FTA (T & S)' (platforms for the reception of free terrestrial (T) or satellite (S) channels); 'Paytv' (satellite, cable or other distribution network for subscribers only); 'On-line' (Internet-based or users of other transmission platforms for the distribution of content).

A1.1 - Access and DTV rules

DTV triggered the deployment of a new range of regulations. For instance, the migration from analogue to digital is addressed by regulators to mitigate poor coverage and multiprogramming enables channels to share the same frequency spectra increasing competition. New digital services might favour certain broadcasters in detriment of others and set-top boxes compatibility and listings are significant ways of controlling viewers. This section will concentrate on the rules created by the introduction of terrestrial DTV.

A1.1.1 - Access rules

Explanation

The access rules are divided into three categories: must-carry, must-offer and may-offer. Must-carry rules determine that distribution platforms, such as satellite or cable, are obliged to include in their line-up the FTA channels. The must-offer rule determines that broadcasters have to offer the channels to all interested distributors, either free of charge or in economic terms. May-offer rules indicate that distributors can offer FTA channels from a different area as long as local channels do not oppose to (that is a regulation normally applied to federated or networked broadcasting systems in order to secure already acquired broadcasting rights).

Implications

These rules are beneficial for the subscribers, as viewers gain access to all FTA channels without the need of additional equipment for tuning the FTA channels. They are also beneficial for the broadcasters because they reach the viewers of paytv platforms. It is also beneficial for paytv operators because they have guaranteed the access - depending on the rule, even free of charge – to the main channels. On the other hand, to allow free access to the FTA channels also indicates that paytv operators do not remunerate FTA broadcasters for the usage of their channels and denies broadcasters extra revenues from distributing their channels in other platforms. Digitalisation and multiprogramming on the other hand may represent an obstacle for distribution technologies of small capacity as FTA channels may represent a big proportion of platform's capacity.

Table 16 – Examples of access rules

UK	Communications Act (CA) 2003: s64.3 (lists the must-carry channels: any BBC digital channel, digital Channels 3, 4 and 5); s272-274 (broadcasters must-offer the must-carry channels without any charge) and; s275 (must-provide those channels free-of-charge in certain areas).
France	Freedom of Communication Act (FoCA) 1986 (as consolidated): Art. 34-1, 34-2 and 96, 98-1 (must-carry and must-offer digital channels).
Brazil	Paytv Act (PA) 2011: Art. 32 (must-carry and must-offer eleven public channels and local commercial channels only on the analogue mode; must-carry is transformed to must-offer in the digital mode).

A1.1.2 - Coverage

Explanation

Coverage rules are a set of geographical coverage obligations to be met by the broadcaster or by the distributor.

Implications

These rules are beneficial for the viewer because guarantees isonomic treatment, regardless of economic conditions, for all households in the area. Coverage obligations may be used as a driving force as they set a clear roll-out map to be followed by licensees and to be enforced by regulators. This has economic implications for the distributor as companies cannot target most attractive areas only and will have to deploy infrastructure in possible non profitable areas.

Table 17 – Examples of coverage rules

UK	Broadcasting Act (BA) 1996: s8 (award of multiplex licenses will take into consideration the coverage area, the timetable and the diversity of services).
France	FoCA 1986: Art. 96 & 96-1 (audiences' digital coverage at least 100% of the analogue mode within the original area).

A1.1.3 - Multiprogramming

Explanation

The technological facility enabled by DTV to transmit more than one programme in the same frequency slot, multiplying thus the number of channels available to the public. It might be also accompanied by a regulatory approach that separates the channel providers from the multiplex operating companies, which are only responsible for transmitting the different channels to the viewers at home, being completely dissociated from the content.

Implications

Beneficial for the viewer as it multiplies the number of channels, offering more diversity in FTA services. It is also beneficial because the offer of dozens of FTA channels competes with paytv platforms. Broadcasters have at least two opposite implications. On the positive side they receive more 'space' to broadcast their content enabling to recycle their old content or to repeat time-shifted ('+1' channels) the original channel. On the negative side, the channel has to invest in new content to fill the increased air-time not necessarily with a proportionate increase in budget (for the case of PSBs) or revenues (for commercial broadcasters). For distributors, multiprogramming implies more expenditure to differentiate paytv offers from a free-to-view service. More HD and 3D content is needed as well as it is more important to secure broadcasting rights to major events (as will be discussed below).

Table 18 – Examples of multiprogramming rules

UK	BA 1996: s1 (definition of multiplex services and digital programme services).
France	FoCA 1986: Art. 30-1 (definition of terrestrial <i>hertzienne</i> digital television) and Art. 30-2 (definition of multiplex operators and commercial distributors of digital terrestrial television).

A1.1.4 - Compatibility of set-top boxes

Explanation

The legal obligation that tuning equipments (set-top boxes) should be compatible regardless the manufacturer or the distribution platform used. It may also allow paytv set-top boxes to be used without subscription to tune free channels.

Implications

A beneficial rule for viewers as they can switch the broadcasting provider without needing to purchase different equipment. Beneficial for broadcasters as assures that their channels will be easily tuned regardless of the distribution company. As it allows more flexibility to the user, paytv operators suffer from higher rates of churn-out (users leaving the service) jeopardising investments in equipments and reducing loyalty to brands.

Table 19 – Example of set-top boxes rules

EU	1995/47 Directive on the use of standards for the transmission of television signal: Art. 4 (ensures decoders compatibility between paytv systems and digital FTA broadcasters).
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A1.1.5 - Electronic programming Guides (EPG)Explanation

The EPGs are the listings of channels on digital systems that indicate to the user what channels are available and which are the scheduled programmes. Regulations may include obligations to secure prominent positions for PSB and for the other main terrestrials.

Implications

In theory, by securing prominent positions for the FTA terrestrials, viewers could find more easily the PSB and the other FTA channels. Hence, the importance of these channels would not be diminished in digital systems as they would not be allowed to be placed in less viewed places (for instance, at the bottom of the list). However, if the regulation is not properly designed (loopholes in regulation), distributors might still offer other tailored listings (such as 'suggested') where channels of their interest could appear first, regardless of their order in the FTA 'dial'. While securing the original numeration of the FTA could be beneficial for viewers and broadcasters from one side, from a different perspective, broadcasters willing to pay for a better position in the EPG are denied this business strategy. Accordingly, by setting rigid *ex ante* rules distributors are denied this additional tranche of revenues.

Table 20 – Examples of EPG rules

UK	CA 2003: s310 (set a code of practice for EPGs which shall provide prominence for FTA channels).
France	FoCA 1986: Art. 34.4 (dictates that the FTA channels must be listed in the same order and in the same hundreds).
Brazil	PA 2011: Art. 32.6 (dictates that the FTA channels must be listed in the same order).

A1.2 - Quotas and content origin

Vital policies for the promotion of the production of national content are the quota policies. These obligations can stipulate the broadcasting (or cinema screening) of regional (as of a group of countries -as the EU- or of regions within a country), national and independent content. However, in order for those quotas to be correctly implemented the nationality of the works must be rightfully assessed by regulation. Another kind of quota that dictates the types of content that will be produced and, therefore, influences channels' identities are the specific content quotas. Regulators might dictate specific programmes to be produced, such as educational, children's or current affairs, steering the overall complementarities of the broadcasting *landscape* of a country. This section will focus on the rules that specify the types of content that shall be produced and how the nationality of the content is evaluated.

A1.2.1 - National and regional content quotas

Explanation

Normally set in percentage of the air-time, these quotas determines a proportion of programmes to be of national or regional origin. Regional can be interpreted as regions within the country or a group of related countries, as is the case of the EU.

Implications

For viewers the broadcasting of national content has several socio-cultural benefits, such as contributing towards democracy, education and citizenry, already discussed in detail during this thesis. However, although this thesis has shown that national content considerable attracts the

attention of viewers, there will always be a proportion of the population not interested in watching national content. National broadcasters profit from this regulation as they are, potentially, the biggest, in terms of hours of output and possibly in terms of revenues, traditional producers of national content. Therefore, the inclusion of this policy places them in an advantageous position with respect to imported channels. Governments benefit in a double effect. Firstly, the policy promotes the national industry, with job and wealth creation effects in several other sectors such as film, information technology, tourism, etc. Secondly, the country also benefits because, as more national content is used, less imported content is used or imported. Hence, fewer imports of these cultural goods may lead to a smaller deficit in the balance of trade. With similar effects, regional quotas are beneficial for local viewers as they are better represented on broadcasters' services and the wealth generating power is geographically more evenly distributed. On the contrary, paytv operators and national broadcasters with smaller resources for producing and acquiring attractive national content cannot use imported content as an alternative to fill the airwaves. If quotas include paytv channels, paytv platforms may have to cease to distribute channels that do not fulfil certain quota requirements, impacting on viewers. Ultimately, the inclusion of disproportionate quotas on paytv-only channels may jeopardise the attractiveness of those services (for instance less channels available and less differentiation with regards to FTA services) and negatively impact the economic performance of the sector resulting in less taxation for governments.

Table 21 – Examples of national content quotas

EU	Audiovisual Media Services Directive (AVMS) 2010/13/EU: Art. 16 ("broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping.").
UK	CA 2003: s264.6.j, 286 & 288 (obligation for FTA channels to include an appropriate proportion of programmes made outside the M25 area).
France	FoCA 1986: Art. 27.2 (FTA channels to broadcast a minimum of 60% of films and television programmes made in the EU and 40% made in France during prime-time), Art. 70 (the same quota is applied to any service that broadcast films).
Brazil	PSB Act 2008: Art. 8.ix (PSB shall broadcast a minimum of 10% of regional content).

	PA 2011: Art. 16 (paytv channels shall include 3h30m per week of Brazilian works during prime-time); and Art. 17 (one third of paytv channels (up to a minimum of 12 channels) to broadcast mainly Brazilian content).
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A1.2.2 - Independent production quotas

Explanation

This tool is in practice a de-verticalisation rule, intervening in broadcasters' activities and opening their schedules to independent production companies. By commissioning content, this intervention also implies the transferral of funds from broadcasters to those, usually, smaller firms. Crucial to this regulation is the meaning of independence. Usually, independence is defined in regulation as total or partial independence from national broadcasters but regulation can also assess independence with relation to foreign broadcasters or to telecommunication services. The assessment of the independence can also include the evaluation of the amount of purchases from a single broadcaster. Similar to the national quota, the independent quota sets a proportion of broadcasters' air-time reserved to programmes produced by independent companies.

Implications

Viewers gain from this policy as it enhances plurality and, possibly, local portrayals' in broadcasting. A well developed production industry may also be positive for national broadcasters as the increase in competition in the production sector may lead to more options of programmes of high standard and better prices. Accordingly, more channels with attractive content are also beneficial for paytv operators as they may increase channel line-up. Another possible outlet for independent productions that could benefit paytv operators is to offer that content on non-linear modes (such as pay-per-view or catalogues). On the downside, the imposition of independent quotas equates to intervening in broadcasters' business model and determining that a proportion of their revenues should be diverted to finance production elsewhere, possibly weakening national media groups. Loopholes in regulation (desired or not) may allow powerful groups in other countries to artificially operate as independent producers locally.

Table 22 – Examples of independent content quotas

EU	AVMS: Art. 17 (broadcasters shall reserve 10% of their transmission time or of their programming budget “for European works created by producers who are independent of broadcasters.”).
UK	CA 2003: s277 (“not less than 25 per cent. of the total amount of time allocated to the broadcasting of qualifying programmes included in the channel is allocated to the broadcasting of a range and diversity of independent productions.”) and; s309 (diminishes the obligation to 10% for digital channels).
France	FoCA 1986: Art. 71 (foresees the broadcasting rights’ conditions for considering works as independent and points to the Decrees 2001-1330, 1332, 1333 & 2002-140 that establish the obligatory financial contributions (in terms of broadcasters revenues) towards independent productions).
Brazil	PSB Act 2008: Art. 8.ix (PSB shall broadcast a minimum of 5% of independent content). PA 2011: Art. 16 (paytv channels shall include 1h45m per week of independent works during prime-time).

A1.2.3 - Specific content quotas

Explanation

Additional quotas may be included on broadcasters’ licenses or agreements in the case of PSBs. By setting specific amounts of content to be broadcast regulators can create complementarities between the different broadcasting channels and services sustaining diversity. The quotas may include: arts, education, children, religion, national and regional news, current affairs and citizenship, regional programmes and sport.

Implications

To sustain diversity is the main purpose of this policy. By offering different kind of content, viewers have a comprehensive set of programmes available to choose from, and not only mainstream programmes, allowing the fulfilment of the traditional Reithian triad ‘to inform, to educate and to entertain’. A well balanced line-up of channels is an important asset which could rival paytv offers. For these reasons distributors of paytv systems may be opposed to these obligations as they could

diminish the attractiveness of the 'long tail' offers to subscribers. These prescriptions are potentially undesirable for broadcasters, as they can be regarded as a direct interference on their business; while regulators oblige them to broadcast certain content, possibly less profitable, in the name of fostering socio-cultural values.

Table 23 – Examples of specific content quotas

UK	BBC Statement of Programme Policy and ITV, Channel 4 and Channel 5 licenses (see for instance BBC, 2007; Ofcom, 2003b respectively; 2004a, 2004b).
France	'Bilan' (similar to the BBC's statements) and 'Autorisations' (licenses) for the main terrestrials FT, TF1, Canal Plus and M6 (see for instance CSA, 2010b; 2010c respectively; France, 1995b, 1996).

A1.2.4 - Definitions of the origin of content

Explanation

The production of any content involves several activities and workforces. The result is a combination of, most likely, different nationalities including producers, directors, actors and technicians; and also studios, laboratories and shooting locations. Therefore, to correctly assess the nationality of produced content may take into account the nationality of the ownership of the companies involved as well as of the workforce. If the content passes the test, it will be eligible to be used for quota purposes and will entitle the production company to receive public subsidy, when available, and to be commissioned by broadcasters for quota purposes.

Implications

National and independent producers and local workers will benefit from a comprehensive assessment that values the production in the country. On the other hand, producers with significant market power may regard these tools as interference in their economic activity and if the test is too restrictive they might desist to produce in the country. For the government a correct assessment will result in well targeted expenditure, as public grants and subsidies are given according to rules for the production in the country, contributing for the generation of national wealth. The definition of national content should not have major implications for broadcasters that already rely on national

and their own productions. Similarly, for those who rely on imported content, the method of assessment is not crucial. However, for that latter category of channels – and for paytv distributors - the most important regulation in this field is the national content quotas.

Table 24 – Examples of definition of origin rules

EU	European Convention on Transfrontier Television 1989 and Council of Europe's Convention on Cinematographic Co-production 1994 (sets the European test).
UK	Statutory Instrument 2006/3430 (definition of "British film", sets a cultural test).
France	Decree 90-66: Art. 5 (defines French works as those produced in the French language).
Brazil	Ancine PM 2001: Art. 1.v (defines Brazilian works as those directed by Brazilian director and uses 2/3 of Brazilian actors and technicians).

A1.3 - Ownership

Ownership rules have two main different axes: the nationality of the ownership and the limits to the concentration of the media. With regards to media concentration, rules might include market assessments, such as maximum audience shares allowed, and include multimedia assessments, such as limiting radio, newspapers and telecommunication providers when acting as broadcasters. This section will focus on the rules regarding media ownership.

A1.3.1 - Nationality of ownership

Explanation

Countries may allow different levels of foreign ownership of the media according to the type of media and to the type of broadcasting channel. Usually FTA services are more closed to foreign ownership and other types of channels, paytv distributors and printed media may be liberalised for foreign ownership.

Implications

Foreign ownership can be regarded as positive by viewers and paytv operators as increases the number of channels operating in the country. On the contrary, more international channels might

mischaracterise national media, diminishing the sense of cultural identity and belonging. National broadcasters would oppose this liberalisation as it may bring global and financially more powerful companies to the local scenario. National producers may have mixed perceptions, as liberalisation brings more distribution opportunities for their content but on the other hand might bring channels which are closed to the introduction of national content. From the point of view of the public administration, to regulate international groups will imply a better regulatory framework, as those companies could be more independent to political pressures.

Table 25 – Examples of rules regarding ownership nationality

France	FoCA 1986: Art. 38 (every person owning more than 10% of the shares shall be identified) and; Art. 40 (foreign nationals are limited to 20% of ownership).
Brazil	Federal Constitution 1988: Art. 222 (limits foreign ownership of news media and FTA broadcasting to 30%).

A1.3.2 - Limits to the concentration of the media

Explanation

Concentration of the media, as it can jeopardise plurality, diversity and democracy, is regulated to varying extents, depending on the levels of competition existing in the country and on the strength of the regulatory institutions. There are several types of limits to media concentration:

- Mono-media - limits the market power of companies in each specific activity and can be assessed locally or nationally. For instance, a limit on the maximum number of licenses or the maximum amount of audiences that the same broadcaster can hold.
- Multi-media – limits the market power of companies in different broadcasting activities. For instance, the maximum number of radio stations that a television broadcaster can hold and vice-versa.
- Cross-media – limits totally or partially certain economic activities operating in broadcasting. For instance, not allowing telecommunication providers to hold broadcasting licenses (as in Brazil) or limiting press conglomerates when acting as broadcasters (UK and France).

Implications

From the perspective of the viewer as a consumer, limits to concentration increase competition. On the other hand, bigger conglomerates bring attached gains of scale. From the citizen perspective, a healthy and pluralist media may result in independent and more reliable media. For dominant broadcasters the regulations may limit the possibility of expanding their business and deny possible commercial synergies that, for instance, enable other groups in other countries. These limits are also prejudicial to the formation of strong national broadcasters which, in turn, would be able to compete with bigger companies from other areas brought by digital convergence, such as telecommunication operators, and from other parts of the world. For paytv operators, as they usually are related to companies with significant market power, those limits may also be regarded as negative for their businesses.

Table 26 – Examples of rules regarding concentration of the media

UK	CA 2003: s350 (Schedule 14) (Channel 3 owners cannot hold national newspapers with more than 20% of the national circulation and vice-versa).
France	FoCA 1986: Art. 39 (individuals cannot hold more than 49% of the shares of channels with more than 8% of audience shares and other intermediate sub-limits) and; Art. 41 (and sub-articles) (sets limits of multi-media concentration (considering radio, newspapers and other distribution technologies) in the analogue and digital mode in the national, regional and local spheres).
Brazil	Decree-Act 1967: Art. 12.2. (individuals are limited to own 5 channels in the VHF band and 10 channels in total (including UHF band) and two channels per (Federation) State).

A1.4 - Broadcasting rights

With the digitalisation of content, works may be distributed by different platforms and services. Therefore, to secure attractive content is vital for differentiation in this highly competitive market. Exclusivity deals are one of the strategies used by broadcasters and distributors to secure that content. Because exclusivity deals may derive from anti-competitive practices and might lead to create a social divide between viewers of FTA and paytv subscribers, broadcasting rights are

increasingly the focus of attention regulators. This section will discuss some rules used for limiting the impact of exclusivity deals, especially on sporting events, and the regulations introduced for diminishing the market power of broadcasters when commissioning content from independent producers.

A1.4.1 - Listed events

Explanation

This type of regulation dictates that the acquisition of exclusive broadcasting rights for major events (mainly sports) – also called listed events (as being published by the regulation authority) – shall follow specific rules. In one extreme, the rules may forbid certain events from being acquired with exclusivity. In the Brazilian case regulation forbids telecommunication providers to acquire rights to main events. At the other extreme there is a complete liberalisation and all events can be broadcast with exclusivity, either by one FTA channel or paytv channel. Intermediate positions are followed by the UK and France. In the British case, within the listed events, a set of ‘minor’ events can be broadcast with exclusivity in one segment (FTA or paytv) if another channel in the other segment (FTA or paytv) has access to highlights or delayed coverage. For the most important events, British legislation may allow exclusivity deals for paytv if they were also offered to FTA broadcasters (or vice-versa) at fair, reasonable and non discriminatory prices. France opted for regulating more events, all of them as of major importance, allowing exclusivity deals in the same conditions as in the British legislation. Competition authorities may also impose other restrictive measures such as dividing the events in different lots allowing companies to partially purchase the event with exclusivity (for instance the ‘Monday nights’ matches are exclusively broadcast on one channel while the Sunday matches on another).

Implications

Around the world exclusivity deals exclude the most important events from FTA, increasingly transferring the most attractive tournaments to the paytv segment. However, if from the FTA television viewers’ point of view these deals are prejudicial, from the sports clubs’ and associations’ perspective they represent increased revenues which, in theory, allows them to be more competitive (new signings, better stadiums, etc). For paytv distributors, exclusivity deals also

represent increasing revenues as they hold some of the most attractive content, being decisive factors in viewers' willingness to pay for television services. As a consequence, broadcasters with less financial resources do not compete on equal terms. Therefore, regulations imposing limits for the exclusivity deals are welcomed by viewers that do not wish to pay for watching that content (albeit implicitly agreeing that the clubs would receive less revenues) and from those broadcasters with less available income, usually national broadcasters and PSBs. Alternatively, paytv distributors and broadcasters with significant market power would oppose to restrictions in their businesses strategies. Not less important, in the case of exclusivity deals fetching lower values because of restrictive regulations, national administrations could lose revenues from taxation (considering that national administrations are efficient in collecting those related due taxes).

Table 27 – Examples of rules regarding listed events

EU	AVMS: Art. 14 (events of major importance for society not to be broadcast on an exclusive basis depriving a substantial proportion of the public of following such events by live coverage or deferred coverage on free television).
UK	CA 2003: s299-301 (foresees a Code on Sports and Other Listed and Designated Events enacted by Ofcom (2008a), which allows Group A events to be broadcast with exclusivity after approval of the regulator and Group B that do not need approval as long as there is alternative coverage (highlights or deferred).
France	FoCA 1986: Art. 20-2 (events of major importance cannot be prevented to be followed by FTA audiences). Decree 2004-1392 (list the events and sets the offering conditions for broadcasting deferred or highlights of those events by FTA channels).
Brazil	PA 2011: Art. 6 (prohibits telecommunication providers from acquiring broadcasting rights to events of national importance).

A1.4.2 - Secondary rights of independent productions

Explanation

These tools regulate the relationship between broadcasters and independent production companies. Because broadcasters may have significant market power when commissioning

content from independent producers, regulators may impose a fairer code of practice. With the objective of increasing competition and plurality of suppliers, the codes may enable independent companies to retain a fairer share of the revenues while producing content. British regulators opted for enacting a code of practice with a guiding principle which states that the contracts shall explicitly determine the different categories of rights purchased (for which markets and distribution windows) and the duration and exclusivity clauses to be contained in each contract. The French opted for more specific rules explicitly dictating *ex ante* the conditions.

Implications

A regulation enabling a proper de-verticalisation and diversification of suppliers of broadcasting content has a direct effect on viewers as it increases the diversity of broadcasting services. Independent producers are protected from possible monopolistic practices by companies with significant market power. A direct consequence for independent producers is that they are able to more clearly negotiate the value of their content for each distribution market, allowing them to sell only the primary right (to FTA services for instance) to the commissioner company and negotiate secondary rights (for instance paytv or international markets) with others. In the same vein, broadcasters do not need to pay for all the rights and acquire only the primary rights at a lower value. On the other hand, that segregation of rights implies that independent producers have to find additional revenues from elsewhere and not rely on broadcasters as their only source of revenues. However, independent productions have to be differentiated from simply outsourcing to 'preferred' companies. If companies buy their independent productions from only few 'selected' companies, competition is not fostered and again monopolistic practices are employed. That is the main reason for the French regulation that limits the proportion of content that can be purchased from one company. On the other hand, these rules should take into consideration the differences in sizes of the independent production companies. While bigger companies may easily find more commissioning companies, smaller firms, which often produce one or only a few products, will find difficult to sell their products to more than one broadcaster. Broadcasters with production facilities and significant market power may oppose these kinds of regulations as independent productions quotas will have to be complied within certain rules interfering, thus, with their businesses. On the other hand, with the increase in completion, broadcasters with fewer resources would be able to

commission content at lower prices. For distributors the growth in importance of the independent production activity could lead to a proliferation of broadcasters. On the other hand, as paytv operators more than often are also broadcasters with significant market power, they might also oppose those kinds of rules.

Table 28 – Examples of rules regulating the commercial rights of independent productions

UK	CA 2003: s285 (foresees that broadcasters shall publish a code for programme commissioning to be approved by Ofcom that shall be transparent and clear about the prices, kinds of rights and the duration which is being paid for).
France	FoCA: Art. 71 (sets the general guidelines for considering companies as independent as commented on Table 22). Decrees 2001-609 (analogue FTA), 1332 (analogue air-paytv), 1333 (digital FTA) and 2002-140 (cable and satellite): Details the conditions for commissioning from independent producers: exclusivity broadcasting rights must be acquired for less than 18 months; only one additional distribution window might be purchased (secondary markets); not retain more than 15% ownership on the production company and; the production company do not commercialise more than 80% of their output with one only commissioner.

A1.5 - Financing

Probably the most extensive set of regulations developed for the production and distribution of national content is that related to funding. There are several tools for financing the production of content and this research analysed some of the alternatives. This section will focus on the alternatives of introducing financial levies on communication services, the 'push' tools, and how public funding can be used for financing, the 'pool' tools, the production of national content.

A1.5.1 - Levy on communication services

Explanation

Levies works as a cross-subsidy with a specific purpose. Without entering into the rigorous terminologies of taxation, levies may be regarded as specific form of taxation – a levy - imposed on

certain activities, such as commercial broadcasters, paytv and telephony operators, and may be calculated as a proportion of the revenues or as a fixed price per activity. The product of that levy can be used for funding PSBs and the production of national content.

Implications

PSBs, as national and public companies with strong and accountable public remits, are probably the most suited companies for providing a wide range of attractive programmes, amongst them national content, to the whole society if adequately funded. Possibly, the TV license works well in countries with better social indicators. In countries such as Brazil, with high (but decreasing) levels of poverty, to impose a TV license would be extremely unfair and unlikely to be properly enforced. Therefore, in Brazil a levy with a fixed price per activity was imposed on the other communication services for financing the public broadcaster. In addition to these resources, the national budget is also used for funding the PSB. However, citizens may oppose the public financing of public channels as a diversion of funds from other activities, such as health care and education, might not be the preferred option for some. In the same vein, a levy for financing the production of national content can also be introduced. France, with the Cosip, and Brazil implemented this path, and the resources are managed by the cinema and audiovisual regulators (CNC and Ancine respectively). Obviously to impose a levy paid by the revenues of commercial companies will receive strong opposition from those affected.

Table 29 – Examples of levies for financing production

France	Decrees 2001-609 (analogue FTA), 1332 (analogue air-paytv), 1333 (digital FTA) and 2002-140 (cable and satellite): sets obligatory financial contributions (in terms of percentages of revenues) for financing films and television programmes produced by independent national and European companies.
Brazil	PSB Act 2008: Art. 32 (sets a fixed fee to be paid annually by companies capable of distributing audiovisual content, such as broadcasters, paytv companies and mobile operators, for funding the PSB). PA 2011: Art. 26 (same as above, however for financing the production of independent productions).

A1.5.2 - Public financing for the production of national content

Explanation

More often than not the production of national films and television programmes is funded by specific public funds. While the independent quota fosters broadcasters' commissioning, public funding is fed by taxation and levies applied on different communication services. In France a levy is imposed on broadcasters' revenues and diverted to a fund, the Cosip, controlled by the cinema and audiovisual agency, the CNC. The contributions applied to commercial and public service broadcaster varies from 3% to 20% of their revenues (see Chapter 7 for more details). In France those funds are applied in two different forms of financing: the 'automatic aid' which allows a rolling flow of public financing to established producers and is based on past performances; and the 'selective aid' which is an up-front loan for financing productions from new producers. The CNC have different methods for selecting the projects that will receive those funds, which may include economic and cultural assessments. In the UK, public funding is financed by a using a percentage collected by the National Lottery. In Brazil there is a similar levy to the French one (that described in the previous item), which feeds the cultural fund, FNC. However, this levy imposed on different communication services is smaller in scale, when compared to the French obligations, and is set as a fixed annual fee (i.e. a fixed amount and, therefore, not proportional to the revenues).

Implications

The usage of public financing for independent productions and film making might be contentious. Those opposed to any form of state intervention and increase in taxes will naturally oppose these rules. Critics may be opposed because the imposition of levies is ultimately, directly or indirectly, paid by subscribers and viewers. Therefore, there will be segments of the society that will prefer not to contribute towards this particular economic activity. As with the preceding levy, commercial companies will most certainly oppose this measure. Another contentious point is the transparency and accountability used by the public administration in the selection process. As, most probably, there are more projects applying for public financing than selected, the decision criteria might involve the use of discretionary powers. On the plus side, governments may direct the funds towards specific types of content in order to foster production where more specifically needed.

Table 30 – Examples of public financing for content production

UK	National Lottery etc Act 1993: s22 (20% of a distribution fund to be allocated for expenditure with the arts). Finance Act 2006: Schedule 5 (film producers receive back from the government, by means of tax reliefs, approximately 20% of what has been spent in the UK for the production of films).
France	Decree 95-110 (details the types of programmes and films eligible for receiving public grants); Decree 98-35 (extends public financing to television programmes); Decree 99-130 (regulates the automatic and selective funding system for films and television programmes).
Brazil	Rouanet Act 8313/1991: creates a cultural fund that invests in audiovisual production, which receives donations and investments in return of income tax relief.

A1.6 - Internet and non-linear services

The popularisation of new services and networks (other than broadcasting services) for accessing films and programmes is directly dependent on the increase in the velocity of those technologies. Therefore, although the first web page was introduced nearly twenty years ago, fixed and mobile broadband nearly ten years ago and *smartphones* in less than a decade, the regulation of those new media now capable of distributing audiovisual content is less addressed by regulation. Currently velocity is less of an issue and operators are competing more directly with broadcasting services using the internet and mobile platforms. As a result an increase in the regulatory obligations for those new services might be expected in the near future. This section will show the ‘light-touch’ regulation introduced in recent years for these new distribution facilities, generally classified as on-demand services.

Explanation

Non-linear services are those offered as a catalogue of programmes selected by a media service provider (such as paytv operators, broadcasters, websites or based on video-gaming consoles) where the airing moment is chosen by viewers and not scheduled by broadcasters as in (linear) TV

channels. To be considered as a service implies the payment of fees, therefore, sites (such as Youtube) or other possible free systems are left completely unregulated by the rules concerning audiovisual content. Regulations on these services may imply in the incidence of fees for financing the production of content, as is the case with the French Cosip; or quotas over the catalogue, as is the case in the BBC On-line service that has to maintain the 25% quota of independent productions on their catch-up website. In Brazil the PSB has a legal obligation to develop content for the internet without specifying any quota or expenditure. In France, PSB's content is freely available worldwide, whereas in the UK the BBC's iPlayer is restricted to local users only.

Implications

Internet and other forms of non-linear distribution of content are increasing in popularity although not strictly regulated yet. The 'light-touch' approach, or regulatory forbearance to impose rules, is used as a means to encourage investment and innovation in the development of those new technologies and services. As the internet is mainly commercially driven, governments may use regulatory obligations to encourage PSBs to use the internet as a complementary form of distribution of national content. The usage of the internet should be strongly considered and financed hand in hand with the increase in digital convergence and the proportional size of younger 'digital' generations. To open on-line services to worldwide use is a matter that will depend not only on site's popularity (and hence the infra-structure and budget needed) but most importantly on the willingness and capability to export the content produced by the PSBs.

Table 31 – Examples of regulations for on-line and on-demand media

EU	AVMS: Art. 3 and 12 to 15 (definition and protection of audiences against harmful content, extended the directive application to those services without enforcing quotas).
UK	CA 2003: s368A to s368R (similar provisions as in the EU directive). BBC Charter 2006: s4 (promotion of digital technologies).
France	FoCA 1986: Art.43-2 to 43-10 (extends the act to include non-linear services). Decree 95-110: Art. 4.iv (included the Cosip financing to non-linear services) and Decree 2010-1379 (sets the specific conditions to be followed by non-linear services – similar provisions as in the EU directive).
Brazil	PSB Act 2008: Art. 3.ix (PSB to promote interactive content).

A1.7 - Cinema distribution and exhibition

As mentioned in the introduction and in Chapter 8, the regulation of the cinema industries is quite extensive and is not the main focus of this research. However, cinema distribution and exhibition activities are highly inter-related with the production and distribution, in general, of national content. Therefore, this section will highlight two examples of regulations used by regulators to promote national content: screen quotas and a policy for the promotion of diversity in the cinema screens.

Explanation

Cinema screen quota for nationally produced films are used in few countries (17 countries according to Lee, 2009) around the globe including Korea, France (although not actively enforced according to Lee) and Brazil. The quotas specify a minimum number of films and of days in which national films shall be screened. The quotas are adjusted in the case of multiplex cinemas (the more screens the fewer minimum number of films and days required per screen). With regards to cinema operators, in France the government agrees with major cinema multiplex companies commitments for supporting diversity of films. For instance, UCG agreed to not exhibit the same film in more than three screens and more than 30% of the cinema sessions during the same week and not to exhibit more than two films in more than two screens (Garandeau, 2011a).

Table 32 – Examples of screen quotas and distribution rules

France	Decree 53-1294: Art. 2 (French films shall be screened during five weeks per trimester – screen quota). Decree 2010-781: Art. 13 (cinema groups shall homologate with the cinema agency a programming commitment which shall promote the diversity of films).
Brazil	Decree 7061/2009: Annex (screen quota varies according to cinemas' number of screens; cinemas with one screen shall exhibit 2 national films during 28 days and larger multiplexes with 20 or more screens shall exhibit 11 national films during 644 days (in total)).

A1.8 - Some concluding remarks on applying the regulatory toolkit

The discussions of the selected regulations for the promotion of national content have shown that the inclusion of rules can have both a negative and positive impact, depending on the activity. As a general rule the introduction of measures to increase competition or de-verticalise the broadcasting industries, obviously, is not welcome by dominant companies. On the other hand, these measures might be welcomed by viewers and citizens. One additional aspect that must be taken into consideration by policymakers when introducing those kinds of measures is which are the competitors introduced with potential new regulations. For instance, the introduction of an independent quota may introduce strongly established foreign broadcasters which might be independent from national broadcasters. However, as part of a bigger group they do not necessarily need to be incentivised by quotas or, even worse, brought to divert revenues from national groups. Hopefully, the explanations of the implications of the tools of this toolkit will give to the reader some indication of which rules could be most effective for the purposes of fostering national content depending on the existing situations.

In this toolkit I divided the audiovisual industries into three major activities: producers, broadcasters and distributors. However, there are several sub-categories of activities as shown in Figure 27 and regulators have different tools at their disposal to be calibrated accordingly to each reality. For instance, global studios might be independent producers (from national broadcasters) in the country under analysis. However, they are situated at a different economic level when compared to

other national producers. Therefore, the introduction of regulatory tools must take into consideration the different economic realities of the agents that will benefit from that particular regulation.

As stated in the introduction, this toolkit is focused on seven main areas of regulation and I have discussed seventeen different types of tools. All of those tools can be broadly categorised either as 'push' or 'pull' tools. Most certainly, the most difficult regulatory task is to find an optimum balance between the obligations and the incentives contained in the regulatory framework. I highlighted the different market implications of each of those rules and, regulators must bear in mind that depending on the 'calibre' of those tools the market can be directed towards promoting more strongly one activity than the other, and sometimes even to the detriment of some activities. Still with regards to economic promotion, this research has shown that some degree of prominence for national groups might be required in order to sustain a strong national media sector in times of liberalisation and globalisation of the media.

ANNEX 2 - TECHNICALITIES OF DIGITALISATION, BANDWIDTH AND COMPRESSION TECHNIQUES

In order to understand why FTA was a limited resource in the analogue 'world' (and, therefore, the licensing of broadcasting channels more strictly controlled by governments) and why digitalisation changed this paradigm, it is necessary to discuss, in a summarised form, the technicalities involved with the transmission of television signals.

The spectrum, or frequency bandwidth or even simpler the 'space in the dial', needed for the transmission of one television channel varies depending on the media used for the transmission (if through the free air or guided as in cable) and on the adopted norm. For instance, the European PAL system uses between 4 and 6 MHz per channel, the picture has 625 lines divided in two frames and is refreshed at a 50Hz rate. When transmitted through the free air it is reserved 2MHz more between the channels for reducing interference, totalling up to 8Mhz bandwidth per channel. French Secam uses either 5 or 6 MHz and has the same number of lines and frequency span as PAL. Paytv systems normally use a 6MHz channel size (or slot) derived from the USA's NTSC television system that has, on the contrary to the European system, 525 lines (divided in two frames) and 60Hz span (Jack, 2007: 265-291).

FTA television has two reserved frequency bands called VHF and UHF with variations in channel numbering and frequency ranges between countries (Tozer, 2004: 166).¹⁸⁰ In order to avoid interference between channels transmitting from different locations, spectra administrators determine the frequency (and hence the channel number) accordingly. This spectra management avoids that two stations reach the same area in the same frequency causing interference (such as 'ghost images'). Therefore, in the same locality analogue television can only cope with six or seven channels in the VHF band without interference. When the VHF band is full, the regulator have to

¹⁸⁰ Usually the VHF band is allocated for channels 2 to 13 and the UHF band for channels 14 to 68. According to the author the UK uses the UHF band for channels 21 to 68 only.

license additional channels (or repeaters) in the upper and more attenuated (hence worst) band, the UHF (Turow, 2009: 514).¹⁸¹

When DTV started, and because the analogue will continue to run until it is permanently switched off (a period called simulcasting), the new digital channels were licensed in the UHF band, where slots are normally still available. Important to note at this point is that in digital television as the signal is coded it is more robust and can be reconstructed effectively even if highly attenuated. Therefore, the usage of the UHF band, which was a problem for the analogue service, does not constitute such a serious drawback for digital signals and more channels can be used in the same geographical area.

In order to maintain compatibility with the analogue service during the period of simulcasting, DTV uses the same amount of spectrum as the former analogue channels. However, since bits are transmitted and not analogue signals, the bandwidth and capacity is usually measured in terms of bits or Mbps as opposed to MHz. As traditionally channels had slots of 6 MHz, due to the physics involved with the transmission, the maximum amount of bits that can be broadcast in 6 MHz is around 40 Mbps, in the cable case, and 20 Mbps through the air (Fischer, 2010: 3). As there is this physical maximum throughput limitation (in terms of Mbps), compression techniques are used in order to carry more information with the same number of bytes. As those techniques are constantly evolving, more channels or higher quality channels in the same available frequency slot are increasingly offered, the so-called multiprogramming feature of DTV. That feature enabled an approximately tenfold increase in the number of channels available to the public in the digital mode. At this point it is important to remark that the option for multiprogramming is at the expense of more quality of the image, which in digital transmission equals to the number of lines of which the image is composed. If in FTA DTV allowed the multiplication in the number of channels, a bigger effect was enabled in the more controlled environments of paytv platforms. Therefore, in those systems, digitalisation enabled the offering of hundreds of channels to the viewers. Digitalisation thus practically ended with the paradigm of scarcity for broadcasting services (although to a minor extent in the case of FTA).

¹⁸¹ Due to the increased attenuation of the radio waves at higher frequencies, those channels deliver a poorer quality image and therefore are less valued by broadcasters.

The digital equivalent of an analogue channel with around 500 lines is the standard definition television channel (SDTV). By contrast, high definition television channels (HDTV) have up to 1020 lines and require more bandwidth to be transmitted. If it was to increase a channel definition to the high definition standard (HDTV) by using analogue transmission, as the Japanese did with the project MUSE in the 1970s, up to 100 MHz would be needed per channel (Ciciora: 73) and, hence, the transmission of HDTV would be incompatible with the traditional 6 (or 8) MHz transmission channels. As the digitalisation of the signals enables the usage of compression software, eliminating repetitions between frames etc, the same signal can be digitally transmitted using less spectra or alternatively, more information (or more channels) can be sent in the same bandwidth. Using the MPEG-2 video compression standard and the same frequency bandwidth of the analogue system, it can be carried in cable up to 18 channels with the same definition of the original analogue channels (transmitted in SDTV) or up to 3 HDTV channels (Ciciora, 2004: 74-75). Through the air those limits are lowered. One HDTV or up to 10 SDTV channels are reported as the current maximum multiprogramming capacity using MPEG-2 in the free-air (Fischer, 2010: 3). The MPEG-4 evolution is reported to achieve up to 70% higher compression rates than MPEG-2 (Costa & Lucena Junior, 2008). Fischer (2010: 138) quotes a reduction from 2 up to 7 Mbps for one SDTV using MPEG-2 to 1.5 up to 3 Mbps with MPEG-4, and for HDTV, a reduction from 10 up to 20 Mbps. In other words, one digital channel using MPEG-4 could carry through the free-air up to 14 SDTV or nearly two HDTV programmes simultaneously.

With mobile TV for handhelds the carrying capacity and transmission rates are different. As screens are smaller the spectrum needed is significantly less. For instance, the DVB equivalent for handhelds, DVB-H, uses 120 to 130 kbit/s per channel which enables it to carry up to 40 channels in one traditional channel slot (Berger & Schoenthal, 2005: 42-43). Certainly tablets will require a higher definition and consequently more bandwidth.

ANNEX 3 – ADDITIONAL COMMENTS ON METHODOLOGY

This annex, divided in three sections, details three methodological aspects highlighted in Chapter 4: the differences of the legislative amendment process of the three countries, the different usages of the concepts of diversity and plurality; and the sources used on the regulatory analysis and on the market research.

A3.1 Differences of the legislative amendment process

The research has revealed that the British legislative procedure is the most difficult and unclear of the three countries. Firstly, new Acts are enacted without repealing the old ones. As a result, parts of the Broadcasting Act (BA) 1990 and 1996 are still valid besides the whole Communications Act (CA) 2003. Therefore in order to understand, for instance, current ownership restrictions, the three Acts need to be read and interpreted side-by-side and complementarily. Secondly, sections of the old Act are amended by different parts of the newer instrument. For instance, Part III of the BA 1996 is entitled “Amendments of the Broadcasting Act 1990” but other parts of the newer Act also amend the BA 1990 (for example Schedules 2 and 11). Thirdly, new sections may amend single words or expressions of an existing clause making it more difficult to understand the resulting wording of the amended clause. Concluding this note on the British law-making process, the legislative website maintained by The National Archives, www.legislation.gov.uk, understandably, has a substantial backlog of consolidations to be made, notably in the CA 2003. Brazil and France, on the contrary, adopt a procedure that consolidates the ongoing Act and modify entire sections, avoiding partial alterations. Therefore their legislative sites, legifrance.gouv.fr and planalto.gov.br, have up to date, reliable, and consolidated legislation available for consultation. In that sense the understanding of the latter countries’ legislation is much facilitated. It may also be said that the legal procedures of those two countries, by being clearer, make the legal system more democratic, open and transparent and consequently easier to research. On a practical aspect, this comment is an important warning to indicate to media scholars the correct methodology to be followed for the scrutiny of British legal documents.

A3.2 - Different (and conflicting) definitions for diversity and plurality

Table 33 – The different usages of the concepts of diversity and plurality by selected scholars

Concept	My usage	(Baker, 2007)	(Price, 1995)	(McQuail & Siune, 1998)	(Croteau & Hoynes, 2006)	(Levy, 1999)	(Kuhn, 1995)	My usage in Chapter 6
Diversity	Whole range of opinions	Different type of independent media (when discussing how the FCC assess the diversity of the media) (77)	Diversity of views (142); diversity of ownership and of content, programme diversity (209)	Freedom of expression and reception by: a) plurality of autonomous media, b) diversity of media types and content, c) different segments of society owning, d) diversity of media content in relation to functions (entert., educ., info.) (42-43)	Diversity of products (programmes) (20); diversity portrays experiences and ideas of society, wide range of options of content and format (34), diversity of views and stories, diversity as the opposite of homogeneity (35)	Diversity of programmes (26)	Diversity of opinions (38); diversity in content (54)	provision of services with a wide range of subjects, serving the tastes and needs of different audiences; opening of more niche channels; wide range of subjects
Plurality	Different agents	Pluralism as opposed to ownership concentration (168)	Relates pluralism with free speech (209); pluralism of views, plurality of opinions (internal pluralism) value, interests and perspectives in the society (33)	Serves democracy by providing citizens with a broad range of information and views and internal pluralism for objectivity and external pluralism for competition	on the other axis without using the word 'pluralism' the author cites 'ownership concentration'; explaining market structures in two axis: the number of firms supplying a product and the level of differentiation between the products being offered (19)	Internal pluralism for PSBs and external pluralism for commercials for the balance of opinions (28); pluralism as opposed to concentration of media ownership (50)	Pluralism amongst newspaper titles(40); pluralism in ownership (54)	independent productions; plurality of ownership; competition in broadcasting

A3.3 - Sources used for the market analysis and their limitations

Although for understanding the regulatory developments that led to the current regulatory framework it was necessary to go back to the liberalisation period of the 1980s there was no available and uniform data for all the activities analysed in this research as early as that period. In this section I will further detail the sources used and the time-period limitations of this research.

The European Audiovisual Observatory (EAO) and the Television International Key Facts yearbooks used for analysing broadcasting and telecommunication figures are available from the year 1995 and 1993, respectively. The Survey of the UK's Independent TV Producers only started on the year 2003. As for the Brazilian cinema data, Ancine's reports start their series in 2005.

With regards to the quota obligations the analysis varies according to the electronic availability of broadcasters' licenses. The oldest licenses available electronically for research in the British case are from 1993 for ITV, 1996 for Channel 5 and 2002 for Channel 4. Due to the same availability constraint, the analysis of the French case will start in 1987. For the Brazilian example, as there are no quotas in broadcasters' licenses, the obligations will be those stated in legislation. Additionally, the analysis has shown that the quotas are not changed every year. Therefore the indicated years in tables and graphs are those where the obligations were modified.

While analysing broadcasters' schedules for the purposes of identifying the nationalities of the most watched programmes, I used different databases available on the internet from the BFI, the French independent initiative Allocine, own broadcasters' information and, lastly, by user-generated initiatives such as IMDB and Wikipedia.¹⁸² As final resource individual pages such as blogs or news were used for identifying the origin of the content and, lately, of the formats. Each source is referenced on the Tables of Annex 9.

Another point that needs explanation is the periods and the audience shares lists used for the analysis. As this thesis is mainly focused on the understanding of the implications of digital

¹⁸² BFI's system is available at <http://ftvdb.bfi.org.uk/searches.php> (last visited in 03/10/2011). Allocine is available at <http://www.allocine.fr/recherche> (last visited in 03/10/2011). The IMDB search engine is available at <http://www.imdb.com> (last visited in 03/10/2011).

convergence for the production of national content, the market analysis will concentrate on the last decade onwards. Another fact that justifies that period is the poor availability of aggregated data, especially for the Brazilian case. The audience shares for the Brazilian case are only publicly available from the year 2004 onwards. Of the three countries under study, the UK is the only one which has a publicly open internet-based database for the retrieval of audience information, the BARB initiative. France and Brazil, on the other hand, have commercial companies specialised in audience measurement, therefore free information on those countries is limited. For the French case the available data from companies such as Puremedia, Ozap or Mediametrie, either are in the form of a 'top ten' yearly list per broadcaster or an overall 'top 100' list which ranks, on a yearly basis, the hundred most viewed programmes of broadcasting services. Brazilian commercial agency, Ibope, on the other hand, only provides freely the list of the 'top 5' programmes per week with no overall yearly rank. Because of the different methods of publications I decided to compare Britain and France by the yearly 'top ten' and the 'top ten per genre' lists given by the International Key Facts Television yearbook and Britain and Brazil by the weekly 'top five' rank as available from BARB and Ibope. In addition I compared the European countries by a third list, adapted from Barb and other internet sources, which compared the 'top 3' programmes of each of the main channels in a determined week. In order to avoid holidays and finals of major sporting competitions the chosen week was the first week of September.

ANNEX 4 – THE DIFFERENT MEDIA SYSTEMS OF THE UK, FRANCE AND BRAZIL ACCORDING TO THE MODELS OF SIEBERT, PETERSON & SCHRAMM AND HALLIN & MANCINI

In the beginning of Chapter 5 I ranked the countries of this case studies based in the exclusive criteria of governmental influence. The media, however, varies also due to several other aspects which are characteristic of each country. Browne (1989: 60) acknowledges the existence of basic factors (geography, demography/linguistics, economy, culture and politics) but also “the manner in which systems are financed, administered, governed and influenced [by other countries.]” Moreover, there are several classifications of media systems that can be used in media studies. Earlier on, in times of political bipolarisation between communism and capitalism, immediately after the creation of the BBC in the late 1920s, the broadcasting systems could be classified as commercial (the American model), state-controlled (Soviet or Fascist) and independent (British). Moreover, those systems where replicated in other parts of the world according to economic relations and influences. Whereas in former European colonies PSBs were set up, communist countries had state controlled channels. In Latin America a mixed model, with American and European influences and some state intervention, was adopted (Coleman & Rollet, 1997: 111-3; Newcomb, 2004: 199; Waisbord, 2000: 50). At this point I will introduce two more elaborated models widely discussed by media scholars. The ones proposed by Siebert et al. and later expanded on by Hallin and Mancini.

Siebert et al. (1963: 1-7) proposed the *authoritarian*, *libertarian*, *social responsibility* and *soviet-totalitarian* categorisation. The author explains that the soviet-totalitarian and social responsibility models are in fact an evolution of the first two systems, the authoritarian and libertarian. In the authoritarian model, ‘truth’, or the content that the broadcaster decides to produce, is decided by “a few wise men that were in a position to guide and direct their fellows.” Media in that model is closely related to the centre of political power and its usage is somehow limited by government.

Conversely, in the libertarian model man is no longer guided and is capable of judging 'truth'. In that system, media is used to inform but also to entertain and to advertise products and brands. Moreover, government has limited control over the economic exploitation of the media. In the social responsibility model, media, on top of the characteristics of the previous system, incorporates spaces for debates and for the discussion of social interests' topics. Government may also interfere in order to ensure the continuity of the public service. All three countries focused in this research could be fitted into the social responsibility model as government has institutionally delimited control over the PSBs. On one hand, the countries have, albeit to different degrees, a buffering body between broadcasters and government, which somehow restricts government direct interference. On the other hand, in the case of Brazil, as broadcasting licenses for educational purposes (but not the commercial ones) are still granted by political acts and, at the same time, commercial broadcasters have a disproportionate influence over regulation, traces of authoritarian and libertarian models can still be identified. In France and in the UK as PSBs still play a significant role in each country's media scene and are eventually, arguably, controlled by the government (certainly by the appointment of their directors) it is reasonable to affirm that the authoritarian model can still be identified.

Forty years after Siebert's group seminal work, Hallin and Mancini (2004: 66-7), while comparing democratic media systems divided those into three other categories: polarised pluralist (integrating media and politics), democratic corporatist (coexistence between commercial and political organisations) and liberal (mainly dominated by market mechanisms). Hallin and Mancini classify the British system as liberal, but recognising the strong role of the BBC; and the French as pluralist. From the concepts given by the authors for each model, I would personally fit Brazil amongst the liberal system as well, mainly because of the preponderance of self-regulated commercial media. In addition, the clientelistic practices, known as *coronelismo eletrônico*, still present to some extent in Brazil, as acknowledged by Hallin and Papathanassopoulos (2002) and Sinclair (2010: 512), reinforce the positioning of Brazil within that category.

This summarised comparative analysis of the media systems of our case studies has shown that as the media models are fairly similar, it is reasonable to infer that regulations are comparable and its transposition, if desired by policymakers, applicable.

ANNEX 5 – SUMMARIES OF THE CLAUSES OF THE LEGISLATION USED IN THE CONCEPTUAL (STEP 1) AND TOOLS (STEP 2) ANALYSIS

This annex lists the regulations used for the analysis of Chapter 6 and 7. In the following tables the actual text of the clauses of legislation have been synthesised and interpreted for easier understanding. The pieces of legislation are presented in chronological order of enactment per country. The reference to the clause of legislation where the summary has been extracted from is indicated between parentheses. For instance, (2.2.b) indicates extracted from Section (2), sub-section (2), paragraph (b); Sc stands for Schedule.

A5.1 - United Kingdom

Table 34 - Broadcasting Act 1981

Diversity	<ul style="list-style-type: none"> → Programmes with proper balance and wide range (2.2.b) → Channel 4 with a proportion of programmes to appeal to tastes and interests not generally catered for by ITV (11.1.a)
Plurality	→ Channel 4 with a suitable proportion of programmes supplied by other companies (12.3.b)
Democracy	→ News presented with due accuracy and impartiality (4.1.b)
Citizensry	<ul style="list-style-type: none"> → Provide television for disseminating information, education and entertainment (2.2.a) → Nothing is included which offends good taste or decency or is likely to encourage or incite crime or to lead to disorder or to be offensive to public feeling (4.1.a) → Proportion of educational programmes in Channel 4 (11.1.b) → Programme contractors (ITV) providing local news (22.a)
Cultural relevance	<ul style="list-style-type: none"> → Secure wide showing for programmes of merit in broadcasting (2.2.c) → Proper proportions of programmes to be of British origins and of British performance (4.1.c) → Proportion of programmes to appeal to the tastes and outlook of persons served (4.1.d) → Events of national interest secured to the BBC (30.1)
Ownership rules	<ul style="list-style-type: none"> → No cross-ownership between TV and radio in local areas (20.3.a) → Television programmes can only be supplied by EU national or resident in the UK (20.6.a.i/ii) → Newspaper shareholders cannot, as programme contractors, act contrary to the public interest (23.1)
Nationality of the content	→ Proper proportion of matter to be of British origin and performance (4.c)

Table 35 - BBC Agreement 1981

Diversity	→ Provide a balanced service with a wide range of subjects, serving the tastes and needs of different audiences (Annex)
Democracy	→ Controversial subjects to be treated with due impartiality (Annex) → No provisions for independence
Citizenry	→ Must not offend good taste or decency or incite crime or lead to disorder to offensive to the public feeling (Annex)
Nationality of the content	→ Proper proportion of matter to be of British origin (Annex)

Table 36 - Films Act 1985

Nationality of the content	→ British film is when the maker is EU and the studio is from the Commonwealth and 75% of the labour costs (discounting one person not being the maker) or 80% (discounting actors) are paid to EU or Commonwealth Citizens (Sc.1.4,7)
Funding	→ End of the levy on cinema tickets (up to 12m£) (2) → Financial assistance can be given in terms of grants or loans for British films (5)

Table 37 - Broadcasting Act 1990

Diversity	→ Provision of services with high quality and wide range of programmes to appeal to a variety of tastes and interests (2.2.b) → Programmes in Channel 4 to appeal to tastes and interests not generally catered for by ITV (25.1.a)
Plurality	→ 25% of independent productions in ITV (16.2.h), C4 (25.2.f), Channel 5 (s29.2.b) & BBC (186.1) → Channel 4 not to be involved in the making of programmes (25.5) → Competition promoted by the BBC for independent productions analysed by the Fair Trading (186.4) → Regional news for Channel 3 to be produced by independent body (32) where no person can hold more than 20% of the body and no more than 50% of Channel 3 (32.9)
Democracy	→ News to be presented with due accuracy and impartiality (6.1.b) → Due impartiality with matters of political or industrial controversy (6.1.c) → Sufficient amount of time to be given to news and current affairs (16.2.a) → Sufficient news and current affairs of high quality on Channel 4 (25.2.d) → High quality national and international news programmes for Channels 3 & 5 (31.1.a) → Party political broadcasts to be included in Channels 3, 4 & 5 (36.1) → No undue prominence to be given to matters of political or industrial controversy in licensable programme services (6, 47.5)
Citizenry	→ Fair and effective competition in the provision of services (2.a.ii) → Nothing to be included which offends against good taste or decency or is likely to encourage or incite crime or to lead to disorder or to be offensive to public feeling (6.1.a) → Due responsibility given to religious programmes (6.1.d) → Range of regional programmes and news of particular interest for the area (16.2.c.i/ii) - ITV, C5 → Sufficient time for religious and children's programmes on Channels 3 & 5 (16.2.e) → Channel 4 as a public service for disseminating information, education and entertainment (25.2.a); with a proportion of educational programmes (25.2.c) → Channels 3, 4 & 5 with a suitable proportion of school programmes (34.1) → Code needed for broadcasting standards of violence, sex, taste and decency by the Broadcasting Stand. Council (152), which should also monitor the service (153) → Foreign satellite services must not offend good taste or decency or are likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling (177.3)
Ownership	→ Licence to highest cash bid (17.1)

rules	<ul style="list-style-type: none"> → Non-domestic satellite means a service transmitted with a frequency allocated to another country even if the programmes are transmitted from the UK for general reception in the UK (43.2) → Licenses only granted to EU nationals or residents in the UK and with no political or religious connections (Sh.2.P.II.1, 2) → Licenses not granted to bodies with undue influence which are adverse to the public interest (Sh.2.P.II.4) and advertising agencies (ibid.6). → Any person can hold only 2 regional Channel 3 licenses, 1 national Channel 3 or 1 Channel 5 (Sh.2.P.III.2) → Holders of a national or regional Channel 3 or Channel 5 can only hold up to 20% interest in the other categories (Sh.2.P.III.4) → Owners of non-dom. satellite distribution platform cannot hold more than 20% of Channel 3 or 5 licenses (Sh. 2. P.III.6.2) → Proprietor of newspaper cannot hold more than 20% of Channel 3 or 5 licenses (Sh.2.P.IV.2.1), only allowed if it is a local newspaper in other area (ibid.2) and vice-versa (ibid.3)
Funding	→ 14% of the revenues of Channels 3 & 5 financing Channel 4 (26.2)
Commercial rights	<ul style="list-style-type: none"> → Programme listings to be available for publishing (176) → Listed events not to be shown on pay-per-view (182)
Rules of access	<ul style="list-style-type: none"> → New category of licensable programme services (by telecom services, other than wireless) (46) and local delivery services for provision of any broadcasting channel by wireless (relays) (72) → Must-carry obligation for BBC, Channel 3 & 4 (Sh.12.4.2)
Universality	→ License of local delivery services to the highest cash bid or to substantially greater coverage (76.4)

Table 38 - Broadcasting Act 1996

Diversity	<ul style="list-style-type: none"> → Same as previous act → Public interest with regards to the opinions expressed on television or radio or in newspapers" Sc.2.11 amending BA 1990.13.1.a.ii
Plurality	<ul style="list-style-type: none"> → Digital channels shall include a proper proportion of EU programmes and 10% of a range and diversity of independent productions (19.2) → Public interest with regards to plurality of ownership between broadcasting and newspaper industries (Sc.2.11 amending BA1990.(13)) → No person can hold more than 20% of the regional news provider for Channel 3 [repealed restriction to ITV cross-ownership] (32.9) → National news provider appointed by regional Channels 3 (74,75)
Democracy	→ Sections 6 to 12 of BA 1990 also to apply to digital channels
Citizenry	<ul style="list-style-type: none"> → Sections 6 to 12 of BA 1990 also to apply to digital programme services → Substitution of the former Council by a Commission (the Broad. Standards Commission) with roughly the same roles (107,8) → Non-domestic satellite may be revoked if programmes encourage or incite crime or to lead to disorder (89)
Ownership rules	<ul style="list-style-type: none"> → Multiplexers not to undue discriminate broadcasters (12.e) → Allow of change of control of regional C3 licenses (78) → No more than two licenses for those with more than 15% of audience (Sc.2.10, amending BA1990.(Sh.2.III.2)) and included those persons with +20% participation as holding interest (ibid.(2.5)) → No person can hold a national Channel 3 & 5 (ibid.(4)) → Maximum ownership of multiplex is 3 (ibid.(5)) → No national newspaper with +20% market share may hold Channel 3 or 5 licenses (Sc.2.11, amending BA1990.(4.1)) → No regional newspaper with more than 20% market share may hold regional Channel 3 licenses (ibid.(4.2)) → No local newspaper with +20% market share can hold a license for digital channels in the same area (ibid.(3)) and vice-versa (ibid.(5))

	<ul style="list-style-type: none"> ↪ Channels 3 & 5 licenses cannot be granted against the public interest (ibid.(9)) ↪ Public interest for promoting economic benefits (when newspaper proprietor owns Channels 3 or 5) (Sh2.11, amending BA1990.(13))
Nationality of the content	<ul style="list-style-type: none"> ↪ Proper proportion of EU content (19.2.a) ↪ Proportion of programmes are of EU origin ITV (16.2.g), C4 (25.2.e) and C5 (29)
Funding	<ul style="list-style-type: none"> ↪ Channel 4 funding also included revenues from multiplexers (82)
Commercial rights	<ul style="list-style-type: none"> ↪ Multiplexers must allow channels to share capacity (12.f) ↪ Listed events of national interest, divided in two categories, one that should be free on BBC, Channels 3 or 4 and the others (98) ↪ Exclusivity of listed events is allowed if there are broadcasters on each category (FTA and paytv) (101)
Rules of access	<ul style="list-style-type: none"> ↪ Separation of multiplex services (transmission) from digital programme services (content) (1) ↪ It is reserved space in multiplexes for Channels 3, 4 & 5 (28.2) ↪ Must-carry for BBC1,2, Channels 3 & 4 (91.2, amending BA1990.(Sh.12.III.4)) ↪ Allows the separation of BBC's transmission network (operation of own multiplex) (131,2)
Universality	<ul style="list-style-type: none"> ↪ Award of multiplexes calculated in terms of coverage, speed and capacity of development (8.2) ↪ Digital local delivery services shall carry the BBC, Channels 3 & 4 & 5 (91.1, amending BA1990.(78A)) ↪ Digital transmission system complies with EU Directive (142)

Table 39 - BBC Charter and Agreement 1996

Diversity	<ul style="list-style-type: none"> ↪ Wide range of subjects (Agreement.3.1), sports (ibid.3.2.d) and children programmes (ibid.3.2.f) ↪ Properly balanced service of a wide range of matters (5.1.a)
Plurality	<ul style="list-style-type: none"> ↪ Independent corporation for providing broadcasting in all matters (Charter foreword & Agreement 2.1)
Democracy	<ul style="list-style-type: none"> ↪ Due accuracy and impartiality with matters of public policy or of political or industrial controversy (5.1.c)
Citizenry	<ul style="list-style-type: none"> ↪ To provide information, education and entertainment, funded by advertisements, or any other mean (Charter.3.c) ↪ Public service for disseminating information, education and entertainment (Agreement.3.2.a) ↪ Serve the tastes and needs of different audiences (Agree.5.1.b) ↪ Not to include programmes that offends against good taste or decency or is likely to encourage or incite to crime or lead to disorder or to be offensive to public feeling (Agree.5.1.d) ↪ Not involve improper exploitation of religious programmes (Agree.5.1.e)
Cultural relevance	<ul style="list-style-type: none"> ↪ Stimulate performing arts (Agree.3.2.b) and programmes which reflect the lives and concerns of both local and national audiences (Agree.3.2.g)

Table 40 - Communications Act 2003

Diversity	<ul style="list-style-type: none"> ↪ Section 2 of BA1990 repealed ↪ Availability of a wide range of services with both high quality and calculated to appeal to a variety of tastes and interests (3.2.c) ↪ Public service remit of Channels 3 & 5 is the provision of high quality and diverse programming (265.2) ↪ Public service remit should include the provision of a wide range of subject-matters and satisfy many different audiences (264.4.a,b) ↪ PSBs (from this act the BBC and Channels 3,4 & 5) should stimulate diverse cultural activity (264.6.b) ↪ PSBs should assure that services are properly balanced satisfying the interests of audiences (264.4.c) ↪ PSBs should include appropriate proportion of original productions (278) and news and current affairs (279)
Plurality	<ul style="list-style-type: none"> ↪ Ofcom to maintain plurality of providers of different services (3.2.d) ↪ Every PSB shall broadcast 25% of a range and diversity of independent productions (277.1); and the BBC (338,Sh12.1)

	<ul style="list-style-type: none"> → Channel 4 not to be involved in programme making (295) → Digital television programme services (the other digital channels, not PSBs) should include 10% of a range and diversity of independent productions (309) → Plurality of views in broadcasting should be taken into consideration when occurring media and newspaper merges (375.1) → Drop of the one person +20% ownership limit to the appointed news provider for Channel 3
Democracy	<ul style="list-style-type: none"> → The standards and codes for broadcasting should guarantee an appropriate level of freedom of expression (4.g) → PSBs should facilitate civic understanding by providing fair and well informed debate on news and current affairs (264.6.c)
Citizenry	<ul style="list-style-type: none"> → Sections 6-12 BA1990 repealed → Function of Ofcom to further the interests of citizens in relation to communication matters and of consumers in relevant markets (3.1) → Codes for public protection from offensive and harmful material (3.2.e) and standards against unfair treatment and infringements of privacy (3.2.f) → Ofcom must regard the desirability of promoting the fulfilment of the purposes of PSB (4.a) → Ofcom must promote media literacy (11) → Created a content board within Ofcom with functions in relation to matters that concern broadcasting content (13.2.a) → Local digital television services should broaden the range of programmes to bring economic and social benefits and catering for the tastes interests and needs (244.5) → PSBs for the dissemination of information and provision of education and entertainment (264.6.a) → PSBs to include a suitable range of science, religion, social issues matters of international significance or interest and matters of specialist interest (264.6.f) → Suitable range of local programmes in regional Channel 3 of particular interest to persons living within that area or community (287.2.a,b) → Channel 4 with a suitable proportion of school programmes(296) → Unacceptable foreign television if offends taste or decency (the only time decency appears in this act) (329) → Code by Ofcom shall prevent material to encourage or to incite to crime or to lead to disorder to be included in television (319.2.b); news with due impartiality (c) and accuracy (d), responsibility with religious programmes (e) and do not involve abusive treatment of religious views and beliefs (6), protection from offensive and harmful material (f), and objectives of adverts and sponsorship (321)
Cultural relevance	<ul style="list-style-type: none"> → PSBs should reflect the different communities and cultural interests and traditions within the UK (264.6.i) → Public service remit of Channel 4 is the provision of a broad range of high quality and diverse programming with innovation, appeals to tastes and interests of a culturally diverse society, educational programmes and a distinctive character (265.3)
Ownership rules	<ul style="list-style-type: none"> → Due to EU framework, Ofcom must promote competition in the provision and availability of electronic communication networks and services (4.3.a,b) and develop EU internal market but promoting the interest of all EU citizens (4.5) → Ofcom can impose conditions to bodies who have significant market power in relation to a market (77); one condition (regulatory regime) may include fair and effective competition in the provision of licensed services (316) → Ofcom, before exercising Broadcasting Act powers for competition purposes, must considered first if it is most appropriate the usage of the Competition Act 1998 (317.2) → Foreigners can hold licenses (348.1); religious bodies cannot hold licenses of Channel 3 & 5 (348.2); local authorities can broadcast (349) → drop of the rule to be a EU national or UK resident (281.2.a) → License holding restrictions were relaxed instead Sh14 was put in place (350) which dictates: newspapers with more 20% market share cannot have more than 20% of Channel 3 in the same area (Sh14.2.1) and a Channel 3 holder cannot hold more than 20% of a national newspaper → Media mergers involving 1/4 of newspaper circulation or of broadcasting audiences triggers intervention of the Secretary of State in the name of special public interest with advice from Ofcom (378)
Nationality of the content	<ul style="list-style-type: none"> → PSBs should use a suitable range and proportion of programmes from outside M25 (264.6.j, 286.1, 286.3 & 288)
Funding	<ul style="list-style-type: none"> → Repealed the financing from IVT to Channel 4
Commercial rights	<ul style="list-style-type: none"> → Programme commissioning should follow a code (285), approved by Ofcom (285.5.b), stating with sufficient clarity the different categories of rights to broadcast that are being disposed of (285.3.b), transparency about the amounts to be paid for each category of rights (c) and satisfactory arrangements about the duration and exclusivity of those rights (d) → Amended the listed events into categories A (most important) and B; A events must be offered, to PSBs and exclusivity rights might be granted if the other segment (paytv or vice-versa) did also acquired rights; B events may have exclusivity rights if secondary coverage (highlights or delayed coverage) was given to the other segment (299-302)
Rules of	<ul style="list-style-type: none"> → Must-carry any digital PSBs (64.3)

access	<ul style="list-style-type: none"> ↪ Definition of television licensable content services, EPGs (232) ↪ Must-offer the must-carry channels to all services (272) including satellite (273) ↪ must-provide any digital PSBs free-of-charge (274.3.a, 275) ↪ Ofcom should foresee a degree of prominence for PSBs in EPGs (310.2)
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Table 41 - Finance Act 2006

Cultural relevance	↪ Cultural test for assessing the nationality, among other criteria: British set, at least one of the 3 main characters is British, British story, British language (SI 643/2006.4A)
Nationality of the content	↪ Cultural test for assessing the nationality, among other criteria: British set, at least one of the 3 main characters is British, British story, British language (SI 643/2006.4A)
Funding	↪ Tax relief of the expenses made in the UK for British content (Sh.5)

Table 42 - BBC Charter and Agreement 2006

Diversity	<ul style="list-style-type: none"> ↪ Public services: BBCs 1-4, Cbeebies, CBBC, News, Parliament, BBCi (Agreement.11) ↪ Changes in services subjected to approval by a Public Value Test (Agr.23) ↪ Appropriate proportion of original productions (Agr.49)
Plurality	<ul style="list-style-type: none"> ↪ The BBC shall be independent (Charter.6) ↪ Quota for independent productions as in Communications Act 2003 (Agreement 52)
Democracy	<ul style="list-style-type: none"> ↪ Due accuracy and impartiality for controversial subjects (Agr.44) ↪ Appropriate proportion of news and current affairs (Agr.47)
Citizenry	<ul style="list-style-type: none"> ↪ Public purposes of the BBC: sustaining citizenship, promoting education, stimulating creativity, representing the UK, bringing the UK to the world, promoting digital technologies and leading digital switchover (Char.4 & Agr.6-10) ↪ Sufficient time of regional (nations and regions) interest (Agr.50)
Nationality of the content	↪ Suitable proportion of programmes from outside the M25 (Agr.51)
Commercial rights	↪ Code relating to programme commissioning (Agr.61)
Universality	↪ BBC must do all reasonably to ensure that viewers are able to access (Agr.12.1)

A5.2 - France

Table 43 - Audiovisual Communications Act 1982

Democracy	<ul style="list-style-type: none"> ↪ Public service for the public interest ensuring honesty, independence and pluralism (5.1) ↪ Right of response for all persons (6) ↪ High Commissioner of Audiovisual Communication for guaranteeing the independency of PSB (12) ↪ PSB shall broadcast electoral campaigns (33)
Citizenry	<ul style="list-style-type: none"> ↪ Public service for providing education, entertainment and culture (5.2) ↪ PSB for the formation of cultural, social, professional and philosophical communities (5.4)
Cultural relevance	↪ PSB promoting the French language (5.6) and diffusing French culture worldwide (5.7)
Ownership rules	<ul style="list-style-type: none"> ↪ Only one license is allowed per person and the same person cannot hold managerial positions in other licensees (80) ↪ Local channels are limited to 25% share for one single person (81)

Table 44 - Freedom of Communications Act 1986

Diversity	<ul style="list-style-type: none"> ↪ PSB offer: one national channel, one regional channel, one for French overseas (44) ↪ Freedom of communication protecting plurality of opinions (1) protected by the Communication and Freedom National Commission (3). ↪ TF1 shall ensure plurality of information and of programmes (62.2.1)
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Plurality	→ Privatisation of TF1 (58)
Democracy	→ Commission guarantees pluralist expressions notably in political programmes (13) → TF1 with obligations of news and current affairs (64.6)
Citizenry	→ Commission guarantees to the citizenry access to free communication (3) → PSB with educational, cultural and social missions (48) → Religious programmes on Sundays morning (56) → TF1 broadcast cultural and educational programmes (64.1)
Cultural relevance	→ Commission defence of French language (3)
Ownership rules	→ All holders of +20% of shares must be identified (38) → Foreigners cannot hold +20% of shares of channels (40) → TF1 privatisation model: 50% block to one group, 10% employees, 40% public offering (58) → Foreigners allowed up to 5% of the shares of TF1 (61)
Nationality of the content	→ TF1 shall broadcast works of French original expression with first broadcast in France (64.2) → The majority of films broadcasted have to be from the EU (70.2)
Funding	→ Obligation for TF1 to finance, from its own revenues, French audiovisual and cinema industries (64.5)
Rules of access	→ Must carry free-to-air channels since 1990 (34.1)
Universality	→ Obligation of maintaining the same coverage for privatized TF1 (62)

Table 45 - Decree 90-66 (and 1990, 1992 and 2001 amendments)

Nationality of the content	→ French works in French language, scenario and script (5). → Considered EU works if produced by EU company, +50% EU financing, 2/3 production cost, artists and studios in the EU. → 60% EU & 50% French content on television (7&8) → Dec. 92-279 included countries signing EU convention TFTV (6) and deferred to an Ordinance of Ministry (cultural test) [Arrêté du 21 Mai 1992] the conditions for assessment of French origin. → Dec. 92-279 diminished French content obligation to 40%. → Dec 2001-1330, included different level of quota for film channels and premiere film channels limiting the number of films to be broadcast and diminishing on those channels the quota to 50% EU and 35% FR works. (6-2,6-3&7) → De. 2001-1330 cable and satellite can diminish FR quota if investing in independent productions (13)
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Table 46 - Freedom of Communications Act 1986 (as amended in 1994)

Diversity	→ CSA fostering competition and diversity (1) → PSB channels same as previous version of the act (44) plus both parliamentary houses channels (45-1)
Plurality	→ Same as previous version of the act but by the new CSA (1) → CSA fostering competition (1) → CSA to determine the expenditure on independent productions (3)
Democracy	→ Independence and impartiality of PSB → Same as previous version of the act (13)
Citizenry	→ Same missions as previous (48) and religious (56) → TF1 same as previous version of the act
Cultural relevance	→ CSA for the defence of French culture and language (1) → TF1 same as previous version of the act
Ownership rules	→ Same as previous version of the act (38 and 40) → Only one license in the same area per person and cable limited to 8M (million) inhabitants per holder (41) → One person cannot hold +49% of a national channel (39.i); if holds +15% in one channel cannot hold +15% of another; if holds +5% in two channels, cannot hold +5% in a third (ii); cannot hold +50% of a satellite license; cannot hold +50% of a channel in an area of +0.2M-6M inhabitants (iii) → Foreigners cannot hold +20% of FTA (40) → Only one national license pp; if owner of satellite only 2 channels; local channels limited to 6M

	<p>audience; if 1 cable + 1 channel with more than 8M audience, cannot receive a new one (41)</p> <p>→ Only one license for (2 cases allowed): holders of a television license for an area of +4M, cable for +6M or newspapers with more than 20% of national circulation (41-1)</p> <p>→ Local licenses for (2 cases allowed): not holders of local or cable licenses or editor of local newspaper (41-2)</p> <p>→ Office of competition with powers in broadcasting by notice of CSA (41-4)</p>
Nationality of the content	<p>→ Audiovisual communication for the development of national audiovisual production industries (1)</p> <p>→ Of the broadcasted works, 60% must be EU and 40% French (27.2&70)</p> <p>→ Broadcasters must disclosure the % of French original expression with first broadcast in France (28.2) that was broadcast and the educational and cultural actions (28.3)</p>
Funding	<p>→ Disclosure of expenditure in French films (28.4)</p> <p>→ TF1 same as previous version of the act</p>
Rules of access	→ Same as previous version of the act (34.1)
Universality	→ TF1 same as previous version of the act

Table 47 - Decrees regulating the financial contribution towards production

Funding	<p>→ Dec. 2001-609 for analogue channels: investment of 3.2% of revenues to EU and 2.5% to French (FR) films (3); +3/4 to independent productions (indie) (6); and for audiovisual works (AV) 16% in FR (8) and 2/3 in indie (11)</p> <p>→ Dec. 2001-609 for terrestrial digital paytv the contribution is higher than for FTA (20&24)</p> <p>→ Dec.2001-1332 for terrestrial analogue paytv channels: for those who spend 20% in films, at least 12% in EU origin & 9% FR and 3/4 in indie; for those who spend +4.5% in AV, 2/3 in indie.</p> <p>→ Dec.2001-1333 for digital terrestrial channels: investment of 3.2% in EU & 2.5% in FR films (4); 3/4 indie (7) (indie if -15% [no -80% obligation]); for AV 16% (9) FR& 2/3 indie (12)</p> <p>→ Dec. 2002-140 for satellite and cable: same as DTV 3.2%EU + 2.5%FR (films), 3/4 indie; 16% FR AV, 2/ indie</p>
Commercial rights	→ Dec.2001-1332, A cinema product is considered indie if rights deals are shorter than 18 months and the broadcaster did not acquired secondary rights for cinema, videogames, other channels, or international (6) and if the audiovisual work is -15% owned by broadcaster and -80% hours purchased by the broadcaster (11)

Table 48 - Freedom of Communications Act 1986 (as amended in 2004 or 2006 as indicated)

Diversity	<p>→ Changed the aim of communication services for the development of audiovisual production (1)</p> <p>→ PSB channels same as previous version of the act, including digital (44) and Arte (45) and changed the Parliamentary channel (LCP) (45-2)</p> <p>→ PSB should celebrate agreements (previously were reports only) including the objectives, commitment with diversity and innovation, investments with French works (53)</p>
Plurality	<p>→ CSA guaranteeing free competition and non-discriminatory relationship between broadcasters and distributors (3-1)</p> <p>→ Broadcasters should invest in independent productions without indicating a quota (71)</p>
Democracy	<p>→ CSA guaranteeing the independence and impartiality of PSB (3.1)</p> <p>→ Same as previous version of the act (13)</p> <p>→ PSB ensuring honesty, plurality of information and pluralist expressions of thought and favouring the democratic debate(43-11)</p>
Citizenry	<p>→ CSA for the social cohesion and reflect the social diversity (3.1)</p> <p>→ Anti-doping programmes (20-3)</p> <p>→ PSB for "promoting social cohesion" and fighting against discrimination and delivering programmes reflecting the cultural diversity" and for civic economic, social, scientific and technical knowledge (amendment 2006, 43-11)</p> <p>→ PSB ensuring honesty, plurality of information and pluralist expressions of thought; diversified offer of information, culture, knowledge, entertainment and sport (amendment in 2006, 43-11)</p>
Cultural relevance	<p>→ CSA for the defence of French culture and language (3-1)</p> <p>→ French language is obligatory except in original works (20-1)</p> <p>→ PSB for the promotion of French and French culture (43-11)</p>
Ownership rules	<p>→ One person cannot hold +49% of a national channel with more than 8% of audience (39.i); same restrictions as previous classes for +15% ownership, satellite and +5% but restrictions only apply to analogue channels (39).</p> <p>→ Same previous restriction for foreigners (40)</p> <p>→ Only one regional license for those national channels with -8% audience; maximum 7 digital channels; if owner of satellite only 2 channels; local channels limited to 12M audience; only one digital per zone; mobile TV limited to holders of -20% of total licenses audiences (41)</p> <p>→ Only one license for (2 cases allowed) for: holders of a television license for an area of more</p>

	than 4M, or newspapers with more than 20% of national circulation (41-1 [ana] & 41-1-1 [dig]) → Local licenses for (2 cases allowed): not holders of national licenses in the area or editor of local newspaper (41-2 [analogue] & 41-2-1 [digital]) → Competition advice from the CSA improved (but same as previous version of the act) (41-4) → TF1 same as previous version of the act (58)
Nationality of the content	→ Same as previous version of the act (27.2&70) [cable and satellite can be partially exempted if investing in independent productions (Decree 2001-1330.13)]
Funding	→ Same as previous version of the act (28) → PSB agreement need to detail financing activities (53)
Rules of access	→ Major events cannot be commercialised with exclusivity if FTA cannot broadcast (20-2) [but have to be offered in equal, reasonable and non-discriminative prices (Decree 2004-1392)] → Independent productions will be assessed according to the duration of the purchasing of the rights, extent of the secondary rights, economic participation of broadcaster (Amendment in 2001, 71)
Universality	→ Definition of digital multiplex (30-2) → Must-offer PSBs and must-carry free PSBs and HD if available (34-1&2) → Included simulcasting in 2007 (96, 98-1&2) → EPGs must include FTA channels grouped in the same hundred (Art.34.4, amended in 2009) → Internet to be used by PSBs for promoting French language and culture (Art. 44.IV, as amended in 2009)

A5.3 - Brazil

Table 49 - Broadcasting Code 1962 and Decree-Act 236/1967

Democracy	→ Quota of 5% of news (38.h) and political campaigning for 90 days (39)
Citizenry	→ Information, entertainment and adverts are subordinated to educational and cultural goals of broadcasting aiming to the higher interests of the country (38.d) → Violation of rules if inciting crime, rebellion or indiscipline, against national defence, honour, war propaganda, offend family and society morals and decency (53) → Created educational channels with no adverts (DA.13) → Quota of 5h per week of educational programmes for commercial broadcasters (DA.16).
Ownership rules	→ Managers, editors and technicians shall be nationals and residents (38) and not politicians (38.u) → Only government, universities, organisations and societies with 100% BR shares can be licensed (DL.4) → Maximum of 10 channels in different locations, of those only 5 in VHF, are allowed (DL.12.2) → Educational channels only for government, universities and organisations (DL.14)

Table 50 - Federal Constitution 1988

Plurality	→ Social communication shall promote independent productions (221) → Broadcasting shall be complementary between private, public and government (223)
Democracy	→ Censorship forbidden in all forms (220)
Citizenry	→ Television shall comply with preference to educational, artistic, cultural and informational goals and respect to ethical and social values of people and families (222)
Cultural relevance	→ Social communication shall comply with the promotion of national and regional culture, (and art and news) (220)
Ownership rules	→ Foreign ownership limited to 30% but managerial and editorial positions are reserved to nationals (222)

Table 51 - Cultural policy – Sarney Act (SA) 7505/1986, Rouanet Act (RA) 8313/1991 and Audiovisual Act (AVA) 8685/1991 (and 1993 amendment)

Plurality	→ Independent producers are those with no relations with broadcasters and cable (AVA, 1, referring to the act 8401/92.2)
Citizenry	→ National cultural programme for the access of cultural sources and for the exercise of cultural rights (RA, 1.i)

Cultural relevance	→ National cultural programme for the stimulation of regional and local cultural and artistic production (RA, 1.ii); protect cultural expressions of the groups that formed society and responsible for national cultural pluralism (1.iv); save the survival and flourishing of creation and lives of society (v); to preserve material and immaterial cultural and historical assets vi;
Nationality of the content	→ National content produced by Brazilian companies with 1/3 of actors and technicians (AVA, 7) → National work if produced by Brazilian company under national management (SA, 4) → Audiovisual work may be produced by a Brazilian company or in co-operation (AVA, referring to the act 8401/1992, 3)
Funding	→ Cultural investor may receive a tax rebate up to 80% (individuals) or 40% (plc) of donations (RA, 26) → Investments in films deducted from income tax (3% persons, 1% companies (AVA, 1) and in television content (4% persons and 6% companies) (AVA 1-A)

Table 52 - Cable Act 1995

Plurality	→ Purpose of cable for diversity of sources of information (3) → 30% of cable capacity to be offered to tier services (24.II), (5.X) [never regulated]
Democracy	→ Cable with purpose of promoting political pluralism (3)
Citizenry	→ Service for the promotion of universal and national culture, leisure, entertainment and social and economic development (3)
Ownership rules	→ 51% of shares with nationals (7), not with politicians (9), telecommunication providers only if no other company was interested (15)
Nationality of the content	→ Obligation to broadcast national independently produced films (31.IV)
Funding	→ Purpose of development of film industry (10.vii) → Obligation to co-produce national films (30.V)
Rules of access	→ Notion of one shared multipurpose network (4.1) → Must-carry obligation for FTA and other government and public channels only existing in cable (23)

Table 53 - Ancine Provisional Measure (PM 2.228-1) 2001

Plurality	→ Enhanced the independent producers definition including independency from all forms of paytv (1.iv)
Cultural relevance	→ Regulator to promote national culture and language (2.i)
Nationality of the content	→ National production company if +50% Brazilian shares and director and 2/3 of artists and technicians are Brazilians (1.v) → Agency for the promotion of Brazilian production in different markets [segments] (2.ii)
Funding	→ Agency for the promotion of national culture and language and stimulate national AV industries (2.i) → Exception of registration fees [certificates] for the works whose right owner invest 3% of the exported revenues in independent productions (39.x) Tax rebate for those whom acquire shares in independent productions (50, referring to the AV.1) and 70% tax rebate for investing in independent productions (50, referring to the AV.3)

Table 54 - PSB Act 2008

Plurality	→ PSB for the access to information by plurality of production sources (2.II) → Complementarities between private, public and government broadcasting systems (2.I) → Quota of 10% of regional and 5% of indie programmes for PSB (8.ix)
Democracy	→ PSB with autonomy from the government with participation of civil society in its control (2.viii, ix) → Space for debate and for democracy consolidation (3)
Citizenry	→ Educational, artistic, cultural, scientific and informational goals (2.iii) → No discrimination by religion, political, philosophical, ethnical or sexual option (2.vi) → Develop critical conscience of citizens by educational, artistic, cultural, informative, scientific and promoter of citizenry programming (3.ii) and, as a minor objective, entertainment (8.iv) → Direct its production by the principles of promoting education, art, culture, information, scientific, citizenry but searching for audiences (3.vii)

Cultural relevance	→ Promotion of national and regional culture (2.iv, v)
Funding	→ 10% of telecommunication services annual inspection fees to finance PSB (32)
Rules of access	→ Develop interactive content for the internet (3.ix)

Table 55 - Paytv Act 2011

Diversity	→ Promotion of diversity of culture and of information (3.ii) → Reception of the Unesco's Convention on the Protection and Promotion of the Diversity of Cultural Expressions (3.1)
Plurality	→ Promotion of "diversity" of production sources (3.ii) → Stimulus of regional and independent production (3.iv) → Minimum 1h45min., weekly, from independent producers (16) → Minimum two channels have to be produced by independent broadcasters (17.4)
Democracy	→ If one news channels is offered it has to be offered a second one (18)
Citizenry	→ Every offer has to include educational, university, legislative, community, citizenship channels and governmental channels (10 in total) (32)
Cultural relevance	→ Promote national culture and the Portuguese language (3.iii) → Minimum two Brazilian independent channels to broadcast at least 12 hours of independent content (17.4)
Ownership rules	→ At least 70% of the shares of production companies and of broadcasters have to be hold by Brazilian nationals to be considered national (2.xviii) → Free and fair competition without monopolies or oligopolies (3.vi) → Broadcasters cannot hold more than 50% of telecommunication companies and telecommunication companies cannot hold more than 30% of broadcasting channels (5)
Nationality of the content	→ Broadcasters managers to be Brazilian nationals (10) → A minimum of 3h30min, weekly, of content has to be Brazilian in main paytv channels (16) → A third of the channels (max 12) has to be of Brazilian content (17)
Funding	→ Telecommunication fee to finance production of national and independent content (26). → 10% of the funding applied to channels produced by communities and universities (27).
Commercial rights	→ Telecommunication companies cannot acquire content rights of events of national interest (6).
Rules of access	→ Non-linear services exempted of national content quotas (Art. 19.vi) → Must carry FTA and additional governmental channels (32) → Must carry channels to be offered in the same sequential order as in FTA services (Art. 32.6) → Must carry channels offered free of charge only in the analogue mode and must-offer isonomically in the digital mode (32.12)

ANNEX 6 – OWNERSHIP RULES

This annex contains detailed information on the developments of mono-media and cross-media ownership in our case studies. In the UK, it may seem that ownership regulation is always related to Murdoch's acquisitions and moves in that country. In the early 1970s, when the media mogul acquired an ITV license in the London area whilst owning a radio station and newspapers in the same region, the regulatory agency, because of a loose *ex post* existing regulation, was criticized for being too inactive (Collins & Murroni, 1996: 66-7). In the following years, the agency was again criticised this time for being too strict, because it decided not to allow any further ITV changeovers during the period of the license (ibid). As a consequence, in the 1980s legislation was introduced to clarify the matter. The BA 1981 prevented ITV holders (Channel 3 "programme contractors") of acting "contrary to the public interest" (s23.1) when associated with newspapers but without setting an actual limit for that cross-ownership. More clearly than with the newspaper market, the act did not allow cross-ownership at all between commercial television and radio in the same geographical area (s20.3.a). By avoiding cross-ownership on those primal services, a minimum plurality objective was sustained by legislation.

Subsequently, in order to deal with those past critics towards the dithering attitudes of the regulatory agency, the BA 1990 introduced a complicated series of explicit cross-ownership rules giving precise limits to the regulatory agency in order to prevent concentration of the media beyond certain levels. Among other limitations, the act ordered that local, regional and national newspapers could not hold more than 20% of the shares of Channel 3 or 5 in the same area or nationally (Schedule 2, Part IV, s2.1). Once again, those and other intricate and rigid rules quickly became object of criticism in times where media was consolidating simultaneously in other countries. Then a new 'de-regulatory' act was introduced.

The BA 1996 released Channel 5 from cross-ownership limitations. However the act also returned to the vague philosophy by dictating that Channel 3 and 5 licenses could not be granted against the “public interest” which included the promotion of plurality, diversity and “economic benefits”, such as employment (Schedule 2, s11 amending the BA 1990, Schedule 2, Part IV, s13). With the CA 2003 those rules were simplified once more and, as a general principle, for the same area, newspaper owners can only hold 20% of the shares of a Channel 3 license and vice-versa (Schedule 14, s2.1).¹⁸³

Limits to mono-ownership in broadcasting were also object of constant regulatory concern. While the BA 1981 did not have any *ex ante* regulation regarding mono-media concentration, the BA 1990 allowed a maximum of two regional Channel 3, the national Channel 3 or one Channel 5 license to be held by the same company (Schedule 2, Part III, s.2). By the BA 1996 the criteria for establishing concentration changed to audience shares. Only two licenses were allowed for those controllers of channels with more than a 15% share of the national audience (Schedule 2, s10, amending the BA 1990 Schedule 2, Part III, s.2). The CA 2003 further relaxed those series of rules to an *ex post* regulation and almost returned to the BA 1981 scenario. The difference with the old setup is in the tools the regulatory agency has at their disposal for regulating and intervening. Using the CA 2003, Ofcom can impose disclosure of accounts on bodies with significant market power in relation to a market (s77), ensuring that those companies operate with “fair and effective competition in the provision of licensed services” (s316). The act also states that in order to enforce competition in broadcasting services the agency should always first consider to apply the Competition Act (s317.2).

Although the CA 2003 gives power to the regulating agency to open the accounts and verify commercial practices of dominating companies, the asymmetry of information is regarded as indomitable in broadcasting services (Tambini, 2009). Therefore, while the new regulatory framework may be regarded as being better equipped than the older one set by the BA 1981, currently, when media groups have higher degrees of consolidation and, hence, economic and lobbying power, to regulate and impose ‘fair’ competition could be even more difficult. For example, it could be argued that the acquisition of the remaining shares of BSkyB by Murdoch’s News Corp in 2011 was only

¹⁸³ In addition the act also dictates that all media mergers involving more than one quarter (1/4) of the circulating newspapers or of broadcasting audiences in a “substantial” area can be object of attention of the Secretary of State, in the name of the “public interest” following advice from Ofcom (s378).

aborted because of the *News of the World* phone hacking scandal and not because of regulators' concerns about the effects of the acquisition to further concentration of the media.¹⁸⁴

Media concentration and cross-ownership rules, on the other hand, varied little through time in France. By the amendments introduced in 1994, the FoCA measures concentration in terms of population coverage, thus different to the UK's BA 1996 which used audience shares as a parameter. Additionally, and also different to the British case, limits were set to the coverage of cable and satellite distribution services.¹⁸⁵ Those limits were successively changed by the several amendments made between 2000 and 2009. The amendments introduced measurement of concentration through a combination of the number of inhabitants and of audience shares.¹⁸⁶

Several other clauses were introduced and services' limits were re-regulated by the already mentioned amendments. Currently, owners of printed media with more than 20% national circulation and broadcasters with more than four million inhabitants cannot receive further national licenses (Art. 41-1 and 41-1-1). Conversely, no printed media owners and national broadcasters are allowed to receive licenses for local services (Art. 41-2 and 41-2-1).¹⁸⁷ By those rules regulators protect local services to be controlled by the local press but at the same time the growth of regional channels is

¹⁸⁴ In that episode, while the conglomerate made an offer for acquiring the remaining shares of the paytv distributor BskyB, News of the World (a newspaper part of Murdoch's conglomerate) was facing accusations of hacking phone conversations. The acquisition was initially given the go ahead by the British government dismissing claims that it would hamper plurality and endangers competition in broadcasting services (see for instance The Guardian 2011). UK's culture secretary did accept Sky's own suggestion to reduce their own participation on Sky News channel (which achieves derisory viewing shares) and that it should be run independently, as a regulatory remedy.

¹⁸⁵ The amendments, limited the ownership of local terrestrial channels to areas with less than six million inhabitants, satellite television broadcasters could only own one radio station and cable licenses where limited to areas up to eight million inhabitants (Art. 41).

¹⁸⁶ With the introduction of digitalisation, in 2004, in order to receive additional broadcasting licenses, broadcasters could not exceed a maximum limit of 8% of national audience share and possess more than seven digital television licenses (Art. 41). Additionally, the amendments that introduced the maximum cap for national audience share also increased the level of concentration allowed, as the six million inhabitants rule was doubled to twelve million.

¹⁸⁷ Additionally, the last amendment regarding to ownership, from 2004, determines the following restrictions (Art. 39): no company can hold more than 49% of the shares of a channel with more than 8% audience share; no holder of more than 15% of the shares of one analogue channel may hold more than the same percentage of the shares of another analogue channel and no holder of more than 5% of the shares of two analogue channels may hold the same percentage of the shares of a third analogue channel. Accordingly, the same article set other limits for analogue satellite television channels owners. No holder of more than 50% of the shares of one analogue satellite channel may hold another analogue satellite channel; if holder of one third can hold up to one third on another channel and if less than 5% in two channels may hold up to 5% of a third channel.

also limited. The French government is concerned with the survival of local media but does not allow them to be major national players.

The amendments to the FoCA have shown that instead of de-regulating or liberalising the ownership rules, like in the British case, the French continued the approach of setting *ex ante* rules. By including the new distribution services into the existing rules, regulators avoided, thus, from the onset, undesired media consolidation and foreign ownership.

In Brazil a mosaic of regulatory instruments dictates the ownership rules and the concentration allowed in broadcasting services. In terms of concentration, for commercial FTA, since 1967 only five licenses can be held by the same group in the VHF band, plus another five in the less viewed, and hence less valuable, UHF band (Decree-Act 236 1967, Art. 12.2).¹⁸⁸ However, there are no restrictions for relay-stations ownership or networking arrangements.¹⁸⁹ Therefore, as a result of those simple ownership restrictions, as shown in Chapter 5, Brazil has a highly consolidated broadcasting market and FTA is dominated by four major Brazilian commercial networks (Globo, SBT, Record and Band) followed by other minor networks.¹⁹⁰

The educational FTA channels on the other hand, can be run by governments, universities and other organisations (Decree-Act 236 1967, Art. 14). While those latter channels may be state-owned (at the Federal, State and Municipal level), as discussed in Chapter 5, politicians, as individuals, can be owners of commercial broadcasting channels (although not managers). On the other hand, politicians were prevented from being licensees of cable services (Cable Act 1995, Art. 9), which was later scrapped by the PA 2011. Therefore, in Brazil there is a peculiar situation where the different governmental spheres, obviously headed by politicians, act as (state-owned and educational)

¹⁸⁸ Brazilian legislation only stipulates limits on channels called “generators” which are stations licensed to generate programmes of their own. Relay channels cannot include different programmes or advertisements (unless in border zones) and there is no ownership limits for those stations. Rede Globo, for instance, covers practically the whole country while only owning, actually, five broadcasting licenses (Belo Horizonte, Brasília, Recife, Rio de Janeiro and Sao Paulo. See Annex 2 for more details on the VHF and UHF bands.

¹⁸⁹ By that arrangement, similar to the American system, networks coverage is achieved either by associated ‘generators’ that reproduce partially the network’s content or by relays that reproduces integrally the content of a ‘generator’. According to Anatel there are currently 300 generators and more than 9,000 relays operating in the country (cited in Ancine 2011: 73).

¹⁹⁰ Such as Rede TV! and Rede Gazeta (commercial), TV Brasil (PSB), TV Cultura (owned by the Sao Paulo state) and Rede Vida (catholic organisation).

broadcasters and other politicians may act as commercial broadcasters. However, it must be remarked that although there is a close relationship between politics and electronic media, as discussed in Chapter 5, apparently, the big commercial networks are not owned by members of the congress. As such, at least with regards to ownership, the Brazilian *mediaspace* is less politically contaminated than in other countries, such as Italy where Silvio Berlusconi was prime-minister for decades while being the major broadcaster in the country.

Cross-ownership between broadcasting and newspaper in Brazil is not a matter of regulatory concern, arguably because of market reasons. While one of the most read Brazilian newspaper, *Folha de Sao Paulo*, has 300,000 readers daily in average (ANJ, 2010), and the most read magazine *Veja* has, arguably, one million copies per weekly edition for the whole country, Rede Globo evening news broadcast, *Jornal Nacional*, although with declining rates over the decades, is, according to UOL news website (Feltrin, 2010), watched daily by 1.6 million households in the city of Sao Paulo only (23% audience share).¹⁹¹ Nevertheless, despite the overwhelming interest on FTA amongst viewers, it is worth noticing that the major Brazilian commercial broadcaster has also interests in the printed media market, as, conversely, the major publishing house of Latin America, Grupo Abril, also operates in the paytv sector and act as broadcaster. Cross-media ownership occurs in Brazil, it is just not addressed in legislation.

The French and the British legal developments with regards to mono and cross-ownership, have shown that, while in Britain there has been a complete cycle from *ex post*, to *ex ante* and returning to a liberal *ex post* regulation, in France regulation stood, in comparison, rigid and *ex ante*. In France, new technologies were added to existing regulation whilst, overall, the same principles were maintained. In Brazil there is a rigid set of rules for avoiding FTA concentration but legislators opted not to assess audience shares or impose more elaborated controls on the media.

¹⁹¹ Audience shares in Brazil are measured in some capitals only. The Great Sao Paulo city has 20 million inhabitants and 7 million households. Brazil has approximately 190 million inhabitants and 53 million residences. Therefore, extrapolating the Sao Paulo figures to the rest of Brazil, the audience could reach a theoretical 12 million households or 43 million inhabitants.

ANNEX 7 –ASSESSING THE NATIONALITY OF FILMS

This annex details the methods implemented by policymakers of the case studies for assessing the nationality of the films. These rules are implemented for two main purposes: grant access to public funds and to count for quota purposes. The methods of each country will be detailed in individual sections.

A7.1 - British 'seesaw'

The Films Act 1985 besides abolishing the Eady Levy¹⁹² (s2) introduced the analysis of economic aspects for assessing the nationality of films. The act, besides determining that the “maker” of the film should be a person (or company) resident in a Member State (of the EU), established that the studio used in the making of the film should be located in the Commonwealth or the Republic of Ireland and that not less than 75% or 80% of the labour costs were paid to Commonwealth or Member States citizens (Schedule 1, s4 and s7). The first percentage applied if the labour costs for one foreigner (for instance one leading American actor) were discounted and the second if two people were discounted (for instance two actors or one actor and a producer). The act also determined that not more than 7.5% of the playing-time could be filmed in a non-UK studio and no more than 20% filmed outside the country. The amendment of the act in 1999 introduced more economic assessments and eliminated those playing-time rules. To be considered British the film should had a total expenditure of 70% in the UK (Schedule 1, s4.3). Additionally, in order to level the percentages described in legislation, labour costs obligations were slightly reduced to 70% and 75% for the cases of one or two foreigners, as described before.

In 2006 the Films Act was once more modified, by the Finance Act 2006 (and regulated by the Statutory Instrument 2006/643), and a form of cultural relevance was reintroduced by means of a

¹⁹² In place since 1957, the Eady Levy was a compulsory fee on cinema admissions (for details see Hill 1996: 100-2).

‘cultural test’. The previous percentages and definitions introduced in 1999 were scrapped. In the new version the “maker of the film” should be a person (or company) resident in the EU (the reference to the Commonwealth was eliminated). There were specific tests for films, documentary and animation.¹⁹³ A work would be considered as ‘British’ if it was awarded 16 points of the maximum 32 foreseen. Up to four points could be achieved with respect to the content (set in Britain, characters depicted as British, British story, English language), 15 points with respect to work aspects if carried out in Britain (photography, visual effects, post production, etc) and 13 points with respect to the usage of British personnel (director, actors, scriptwriters, etc).

Less than one year after the test was in place it was substantially modified and since that reform much emphasis is diverted to content requisites (by the Statutory Instrument 2006/3430). The test, still used, reduces the total of points to 31 and gives to the same previous categories a new balance of points. Content related items are augmented to a maximum of 16 points, work related aspects are reduced to three points and personnel are diminished to eight points. Additionally, the new test includes a new category which allows four more points depending on “the contribution of the film to the promotion, development and enhancement of British culture.”

A7.2 - French approach: ‘man the barricades’

Detailing the concepts of ‘French expression’ foresee in the FoCA 1986, the Decree 90-66 defined European works as those produced by a European company (or EU national) and where the financial, technical and artistic decisions were taken under final responsibility of EU citizens. Furthermore, the decree determined that EU works should be 50% funded by EU companies and that two thirds (2/3) of the production cost should be spent in the region. In terms of personnel, the Decree stated that those works should employ at least two thirds (2/3) of European actors, technicians, authors, directors, scriptwriters and other professionals and that the works should be performed in EU studios and laboratories in the same proportion (2/3). As can be seen from those rules, the French setup in the early 1990s was very similar to the one that reigned in the UK until 1999. However, the French approach to the definition of the nationality changed in 1992. After the political momentum that

¹⁹³ For the purposes of this discussion I will concentrate on the films’ test only.

followed the introduction of the TWF Directive in 1989 and in times of the GATT negotiations,¹⁹⁴ the decree and the parameters where changed.

In 1992 instead of stating a fixed proportion of minimum expenditure or of European personnel by Decree the decision on the assessment was transferred to the Ministry of Culture and of Communication. In a move that opened space for using discretionary powers, and hence to make a political decision, the Ordinance of 21/May/1992 established the first 'cultural test'. The new rule introduced the following scoring scheme: director (3 points); setting (2); other authors (1); main actor (3); second actor (2); 50% of expenditure of other actors (1); image (1); sound (1); editing (1); decoration (1) and laboratories (2). Of a total of 18 points, the work would qualify as European if achieved 13 points in the case of audiovisual works and 14 for films. That test with the same weights is still in place. It is important to note that those French rules were quickly adopted by the aforementioned Council of Europe's convention of 1994 and were inserted within an overall policy of boosting the production of European content.

The subsidies given by French legislation for the production and distribution of films and audiovisual works are set by the Decree 99-130 with the latest modification introduced in 2006. The CNC film agency has a comprehensive test that includes individual assessments for the production company, the studios and the laboratories and the application of the 'European test' (*bareme europeen*) and the 'financial support test' (*bareme du soutien financier*) (CNC, 2011d). In order to be awarded points, the production company, the studios and associated laboratories need to be established in France and managed by French or European citizens. In the case of the European and funding tests, the nationality of each of the companies involved with the production is also evaluated and the project can achieve French or European status accordingly.¹⁹⁵ It is only when the film passes this extensive assessment that the project will be entitled to receive public funding. Those additional evaluations

¹⁹⁴ See Chapter 3 for more detail on GATT negotiations.

¹⁹⁵ In the case of a fiction film, for instance, the 'European test' is equal to the one with 18 points described previously and the work has to score the same amount, 14 points. However, the difference lies in the other assessment, the financial test. In order to be classified as European, the film has to score 25 out of 100 points available in the following broad categories: production company (10); language (20); authors (10); actors (20); creative technicians (14); technicians (6); location and post-production (20). While the items production company and language are awarded fully or not, depending if the company is European and the language is French, the other categories are further sub-divided. For instance, authors (10 points) is divided into: director (5); author, adapter and script (4) and; composer (1) (for full details see CNC 2011).

performed by a selecting committee of the CNC and the consequent public funding available differentiate the French from the British financing mechanisms.

A7.3 - Brazil: one step behind

According to the so-called Sarney Act 7505/1986,¹⁹⁶ to be considered as 'national' any cultural work (the act applied to any form of art) had to be produced by a Brazilian company under the managerial control of Brazilian citizens (Art. 4). Later on, when the cinema agency was created, the Provisional Measure (PM) 2228-1/2001 considered that only the works that were produced by a Brazilian company (more than 50% of the company should be owned by Brazilian nationals) and under the managerial control of a Brazilian citizen would be considered as Brazilian (Art. 1.v). Moreover, according to that regulation, works should be written by Brazilian authors, directed by nationals, and should use at least two thirds (2/3) of Brazilian artists and technicians. In the following year the instrument was amended (by the act 10454/2002) in order to include co-productions. Also within those amendments, productions are currently considered national if directed by a Brazilian director, or a foreigner having resided in the country for at least three years. By that amendment the act also dropped the obligation of a work to be based on a Brazilian author. The act thus allows 'imported' stories to be nationally adapted. The new act maintained the same proportion of actors and technicians (2/3), as in the old rule.¹⁹⁷

¹⁹⁶ The act was nick-named after the former President's surname.

¹⁹⁷ The regulation also detailed that in the case of co-productions with countries with whom Brazil does not have co-operation agreements, the ownership of at least 40% of the commercialisation rights shall remain with Brazilian companies.

ANNEX 8 –THE DEVELOPMENT OF CONTENT QUOTAS

This annex contains all the compiled quotas for each of the main terrestrials of our cases study. As guidance to the reader, an explanatory note is included after each of the following tables which summarises the main points for each broadcaster.

General note: hpy – hours per year

A8.1 - UK

Table 56 – BBC 1 output of specific content and stipulated content quotas as stated in Statement of Programme Policy

a) quotas in terms of hours

Category / Obligation	Output (**)			Quota (**)			
	1986 (*)	1993 (*)	1996 (*)	2002/2004	2005/2006	2007/2008	2009/2010
Arts (including music) (hpy) (1)	11	21	25	122	45	45	45
Education (factual prog.) (hpy)	280	125	91	650	650	650	700
Children (hpy) (1)	694	853	671	400	400	500	750
Religion (hpy) (1)	126	95	106	80	80	80	55
National news (hpy)	417	1179	1361	570	1380	1380	1380
Regional news (hpy)		1687				3920	3920
Current affairs / citizenship (hpy) (1)	1095	1129	92	80	90	273	182
Regional programmes excl news (hpy) (1)						693	467
Regional programmes including news (hpy) (1)						3290	3135
Sports (hpy)	887	657	863	260	260	260	
TOTAL (hpy)	3510	5746	3209	2162	2905	11091	10634

b) quotas in terms of percentages

Category / Obligation	Output (**)			Quota (**)			
	1986 (*)	1993 (*)	1996 (*)	2002/2004	2005/2006	2007/2008	2009/2010
Independent (%)		25	25		25	25	25
Original productions (%)					70	70	70
Regional production in the area (%)						95	95
Producing programmes outside the M25 area (£%/h%) (2)	35	35	43	33		30/25	30/25

Notes:

(*): in 1986, 1993 and 1996 there were no specific content quotas stated in the annual reports, instead of quotas the table uses television hours of output.

(**): Quotas stated in the Statement of Programme Policy of the indicated years.

(1) - BBC 1 & 2 share the obligation in 2009-2011, indicated half of the total obligations.

(2) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Sources: (BBC, 1987: 50-3; 1994; 1997: 65, 94-6; 2003: 122; 2004: 140; 2006: 144; 2007, 2009a)

Summary:

The main changes that occurred in 2006 and the increase in the obligations from 2005/2006 onwards are due to the beginning of the new charter. Regional obligations started during that charter and an explicit quota for sports programmes was abandoned for the period 2009/2010. By the diversity of obligations BBC 1 can be classified as a generalist channel with strong focus on news.

Table 57 – BBC 2 output of specific content and stipulated content quotas as stated in Statement of Programme Policy

a) quotas in terms of hours

Category / Obligation	Output (**)			Quota (**)			
	1986 (*)	1993 (*)	1996 (*)	2002/2004	2005/2006	2007/2008	2009/2010
Arts (including music) (hpy) (1)	144	53	169	200	200	200	200
Education (factual prog.) (hpy)	1331	841	2502	500	500	500	520
Children (hpy) (1)	36	242	717	100	100	500	750
Religion (hpy) (1)	21	34	16	20	20	20	55
National news (hpy)	464	258	634	100	100	100	
Regional news (hpy)		1687					
Current affairs / citizenship (hpy) (1)	312	1187	86	230	240	423	182
Regional programmes excl news (hpy) (1)						693	467
Regional programmes including news (hpy) (1)						3290	3135
Sports (hpy)	910	963	890	430	430	430	
TOTAL (hpy)	3218	5265	5014	1580	1590	6156	5309

b) quotas in terms of percentages

Category / Obligation	Output (**)			Quota (**)			
	1986 (*)	1993 (*)	1996 (*)	2002/2004	2005/2006	2007/2008	2009/2010
Independent (%)			25		25	25	25
Original productions (%)					70	70	70
Regional production in the area (%)						95	95
Producing programmes outside the M25 area (£%/h%) (2)	52		43			30/25	30/25

Notes:

(*): in 1986, 1993 and 1996 there were no specific content quotas stated in the annual reports, instead of quotas the table uses television hours of output.

(**): Quotas stated in the Statement of Programme Policy of the indicated years.

(1) - BBC 1 & 2 share the obligation in 2009-2011, indicated half of the total obligations.

(2) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Sources: (BBC, 1987: 50-3; 1994; 1997: 65, 94-6; 2003: 122; 2004: 140; 2006: 144; 2007, 2009a)

Summary:

See comment on Table 56. Additionally, the obligations for BBC 2 indicate that the channel could be classified as generalist.

Table 58 – BBC 3 & BBC 4 stipulated content quotas as stated in Statement of Programme Policy

a) quotas in terms of hours

Obligation	BBC 3			BBC 4			
	2003-2005	2007-2008	2009-2010	2002-2004	2005-2006	2007-2008	2009-2010
Arts (including music) (hpy)	50	50	35				100
Education (factual prog.) (hpy)	30	50	125				110
Religion (hpy)	15						
Current affairs / citizenship (hpy)	15	15	15				
TOTAL (hpy)	110	115	175	0	0	0	210

b) quotas in terms of percentages

Obligation	BBC 3			BBC 4			
	2003-2005	2007-2008	2009-2010	2002-2004	2005-2006	2007-2008	2009-2010
Premieres of new intern. Films (number)					20	20	20
Independent (%)	25	25	25				25
Original productions (%)	80	80	70	70	70	70	70
Producing programmes outside the M25 area (£%/h%) (1)	33	30/25	30/25			30/25	30/25
European origin (%)	90	90		70	70		

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Sources: (BBC, 2003: 122; 2004: 140; 2006: 144; 2007, 2009a)

Summary:

The obligations shows that BBC 3 is more linked towards education and citizenry objectives and should use a high proportion of European content. BBC 4 on the other hand has an artistic orientation where national content could be more widely used and geared towards the screening of original films.

Table 59 – CBBC & Cbeebies stipulated content quotas as stated in Statement of Programme Policy

a) quotas in terms of hours

Obligation	CBBC				Cbeebies		
	2002/ 2004	2005/ 2006	2007/ 2008	2009/ 2010	2002/ 2006	2007/ 2009	2009/ 2010
Arts (including music) (hpy) (1)	50	50	35				
Education (factual prog.) (hpy)	30	50	125	550			
Religion (hpy)	15						
Current affairs / citizenship (hpy)	15	15	15	85			
TOTAL (hpy)	110	115	175	635	0	0	0

b) quotas in terms of percentage

Obligation	CBBC				Cbeebies		
	2002/ 2004	2005/ 2006	2007/ 2008	2009/ 2010	2002/ 2006	2007/ 2009	2009/ 2010
Independent (%)	25	25	25				25
Original productions (%)	80	80	70	70	70	70	70
Producing programmes outside the M25 area (£%/h%) (1)	33	30/25	30/25			30/25	30/25
European origin (%)	75	75	75		90	90	75

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Sources: (BBC, 2003: 122; 2004: 140; 2006: 144; 2007, 2009a)

Summary:

The obligations, more detailed for the CBBC channel, indicate that more socio-cultural objectives are foreseen for that service. The Cbeebies is more generalist as it is intended for the youngest audiences and, because of that, there are no obligations for specific kind of programmes.

Table 60 – BBC News, BBC Parliament, BBC HD & BBC on-line stipulated content quotas as stated in Statement of Programme Policy

a) quotas in terms of hours

Obligation	BBC News	BBC Parliament	BBC HD	BBC on-line
	2002/ 2004	2005/ 2006	2007/ 2008	2009/ 2010
Arts (including music) (hpy)	50	50	35	
Education (factual prog.) (hpy)	30	50	125	
Religion (hpy)	15			
Current affairs / citizenship (hpy)	15	15	15	
TOTAL (hpy)	110	115	175	0

b) quotas in terms of percentages

Obligation	BBC News	BBC Parliament	BBC HD	BBC on-line
	2007/ 2010	2007/ 2010	2009/ 2010	2009/ 2010
Independent (%)	25	25	25	
Original productions (%)	80	80	70	70
Producing programmes outside the M25 area (£%/h%) (1)	33	30/25	30/25	
Max. Sports and first running films (%)			20	
Budget spent on independent content (%)				25

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Sources: (BBC, 2003: 122; 2004: 140; 2006: 144; 2007, 2009a)

Summary:

This group of channels started to be regulated later on during the last charter approved in 2005 and there were no significant changes on their statutory commitments with regards to programme obligations. The news channels are obliged to transmit a high proportion of live news whereas the HD channel cannot concentrate mainly in sports and films having educational and current affairs obligations as well. BBC on-line's objective is to mirror the output of all of BBC's channels output, within practical limits. However, the broadcaster shall ensure that the capacity limitations do not affect the proportion of independent content available on the web and hence the quota.

Table 61 – ITV (ITV-1) stipulated content quotas as stated in the licenses

a) quotas in terms of hours

Channel / Obligation	License 1991-2004						License 2004-			
	1993	1995	1996	1999	2002	2003	2004	2006	2008	2009
Regional ITV (*)										
Regional news (hpy)	208	208	208	208	365	365	365	365	365	365
Regional current affairs (hpy)	52	65	52	52	78	78	78	78	78	43
Regional programmes (news/ current affairs/ other) Total (hpy)	416	416	416	248	419	312	442	364	338	208
Non-regional prog.: entert./sports/educ./art (hpy)	130	110	130	130						
Religion (hpy)					104					
Children (hpy)					391					
REGIONAL SUB-TOTAL	806	799	806	638	1357	755	885	807	781	616
National ITV (*)										
National news (hpy)		330	330	330	260	260	260	260	260	260
National current affairs (hpy)		130	130	130	52	52	52	52	52	52
Non-regional prog. (entert./sports/educ./art) (hpy)		37	37	37						
Religion (hpy)		5	5	5						
Children (hpy)		220	220	220						
SUB-TOTAL NATIONAL		722	722	722	312	312	312	312	312	312
TOTAL REGIONAL AND NATIONAL	806	1521	1528	1360	1669	1067	1197	1119	1093	928

b) quotas in terms of percentages

Channel / Obligation	License 1991-2004						License 2004-			
	1993	1995	1996	1999	2002	2003	2004	2006	2008	2009
Regional ITV (Company: London Weekday)										
Independent productions (%)	25	25	25	25	25	25	25	25	25	25
Original productions (%)	65	65	65	65	65	65	65	65	65	65
Regional production (outside M25) (£%/h%) (1)						40/33	40/33	50/50	50/50	35/35
ITV National (Breakfast)										
Independent productions (%)		50	50	50	50	50	50	50	50	50
Original productions (%)		80	80	80	80	80	80	80	80	80

Note:

ITV National (broadcaster Breakfast) license's variations occurred on 1994 (a1), 2001 (b1) and 2011(c1).

(*) Regional licensee used is broadcaster London Weekday and national licensee is Breakfast.

(1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Source: (ITC, 1991, 1995, 1996b, 1999b, 2001, 2002b; Ofcom, 2003a, 2004a, 2006a, 2008d, 2009c)

Summary:

The table is divided between the regional and the national ITV obligations (during certain periods of the day the regional ITV channels must network the programme generated by the national ITV broadcaster). The total hourly obligations of national ITV, around 1,000 per year indicates that the regional companies have to broadcast approximately three hours of national content. The obligations indicate that ITV is a generalist channel with news obligations. However, those obligations are far smaller when compared with the BBC 1. All the other specific programmes obligations were dropped in the renewal of the license. The independent productions obligation for the national ITV is doubled, possibly as a remedy to the concentration enabled on the ITV companies, where ITV Plc owns the national and 12 of the 15 regional licenses.

Table 62 – Channel 4 stipulated content quotas as stated in the licenses

a) quotas in terms of hours

Obligations	Old licenses					New license	
	1993	1996	2000	2003	2004	2005	2010
Schools (hpy)		337	330	330	330	330	0.5
Education (hpy)	364	364	364	364	365		
News (hpy)		208	208	208	208	208	208
Current affairs (hpy)	208	208	208	208	208	208	208
Religion (hpy)	52	52	52		52		
Multicultural (hpy)			156		156		
TOTAL				1110	1319	746	416.5

b) quotas in terms of percentages

Obligations	Old licenses					New license	
	1993	1996	2000	2003	2004	2005	2010
Independent (%)	25	25	25	25	25	25	25
Original commissions (%)			60	60	60	60	56
Producing programmes outside the M25 area (£%/h%) (1)			-/30	-/30	30/30	30/31	35/35
Max. Repeats (%)				40			

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Source: (Channel 4, 1994, 1997, 2001; ITC, 1991, 2002a; Ofcom, 2004b, 2010d)

Summary:

Originally intended to be geared towards minorities and to be an innovative channel, the obligation to broadcast multicultural programmes was scrapped during the renewal of the license. In fact, the renewal also represented lighter regulatory obligations in terms of hours of specific programmes. Education and schools' programmes obligations were virtually scrapped (only ½ hour was left). Probably as result of economic underperformance, the original commission obligation was eased allowing for the usage of more repeats. In fact, the repeats' limit was eventually scrapped.

Table 63 – Channel 5 stipulated content quotas as stated in the licenses

a) quotas in terms of hours

Obligations	1996	1997	1999	2000	2001	2002	2003
News (hpy)	312	440	440	572	469	469	469
Current affairs (hpy)	91	250	250	260	130	130	130
Education (hpy) (1)	330	330	290	290	156	156	156
Religion (hpy)	52	52	52	52	52	52	52
Children (hpy)	495	800	800	870	1088	1088	1088
Drama/Enter/Sport/Arts (hpy) (1)	7190	6870	6960	6710	116	116	126
TOTAL	8470	8742	8792	8754	2011	2011	2021

b) quotas in terms of percentages

Obligations	1996	1997	1999	2000	2001	2002	2003
Independent (%)	25	25	25	25	25	25	25
Repeats (%)	21	21	30	30	36	40	40
Original productions (%)	57	57	54	51	55	53	51
Producing programmes outside the M25 area (£%/h%) (1)					10	10	10/10

Note: (1) £% - indicates the minimum percentage of expenditure outside the area compared to the overall programming costs; h% - indicates the minimum percentage of hours with relation to the total broadcasting hours.

Source: (ITC, 1996a, 1997, 1999a, 2000, 2001, 2002c; Ofcom, 2003b)

Summary:

Originally devised as a competitor to ITV, the obligations agreed for Channel 5 shows the generalist purpose of the service. Hourly obligations were also significantly eased in 2001, the most substantial being the more costly drama, entertainment, sports and arts. Another indication that the commercial performance is being sustained (and helped) by regulation is the constant increase in the limit of repeats.

A8. 2 - France

Table 64 – France Televisions main terrestrials stipulated content quotas as agreed in their *Cahiers de Charge* – France 2 (former Antenne 2), France 3 (former France Regions), France 4 and France 5 (carrying Arte schedule during day-time).

a) quotas in terms of hours (and number where indicated)

Obligations	France 2				France 3				France 4		France 5		
	1987/ 2000	2000	2005	2009	1987/ 2000	2000	2005	2009	2005	2009	2000	2005	2009
Max. Number of films (number)	192	192	192	192	192	192	192	192	52		51	192	
Spectacles (number)		15	18	18		15	18	18	50	18			18
French and EU audiovisual works (hpy)		120	120	120		120	120	120		120			120
Original French audiovisual works (hpy)	300				120								
Original French and EU audiovisual works (hpy)		96	-			96	-						
Youth (hpy)											910		
Music (hpy)	18	40	40	40	18	52	52	40	48	40			40
Total (hpy)	318	256	160	160	138	268	172	160	48	160	910		160

b) quotas in terms of percentages

Obligations	France 2				France 3				France 4		France 5		
	1987/ 2000	2000	2005	2009	1987/ 2000	2000	2005	2009	2005	2009	2000	2005	2009
European films & audiovisual (%)	60	60	60	60	60	60	60	60	60	60	60	60	60
French films & audiovisual (%)	50	40	40	40	50	40	40	40	40	40	60	40	40
Proportion of in-house production (%)	50				70								
Revenues to production of French & EU audiovisual (AV) (%)		17.0	18.5			17.5	19.0						
Revenues to production of French audiovisual (%)			16.0				16.0		14.0		15.0	16.0	
Revenues to original AV production (%) (1)			13.9				14.3		4.7			12.0	
Revenues to production of indie AV (%) (2)		11.5	12.3	18.5		11.5	12.7	18.5	9.3	18.5	10.0	10.7	18.5
Revenues for production of films (%)		3.0	-			3.0	-						
Revenues for production of EU films (%)			3.2	3.4			3.2	3.4		3.2			
Revenues for production of French films (%)			2.5	2.5			2.5	2.5		2.5			
Revenues for production of indie films (%)		75.0	75.0			75.0	75.0						

Notes: (1): Fr 2 & Fr 5 obligation is 3/4 of total av. contribution, Fr 4 is 1/3; (2): 2/3 of total av. contribution, from 2009 is an 18.5% contribution.

Sources: (CSA, 2001b: 7; 2001c: 9; 2001f: 12; 2006b: 14-5; 2006c: 16; 2006d: 6; 2006e: 11; 2010b: 31-3; France, 1987a)

Summary:

Contrary to the British case, the hourly obligations of the French PSB were not raised through time. There are no substantial obligations for specific types of programmes. The focuses of the obligations are the broadcasting of European and national television programmes and films. However, even for those cases the obligations shifted towards an approach of introducing more financing contributions. The easy in specific programme obligations may also be explained by the fact that more services were launched without an increase in revenues.

Table 65 – TF1 stipulated content quotas.

a) quotas in terms of hours (and number where indicated)

Obligation	1987	1996	2000	2005	2009
Films (number)	170	192	192	192	192
News (hpy)	670	800	800	800	800
Current affairs (hpy)	405	0	0	0	0
Children (hpy)	64	1050	1050	1050	1050
Original French audiovisual (hpy)	350	0	0	0	0
Arts & music (hpy)	60	0	0	22	22
French or EU original AV productions (hpy)	0	0	0	0	120
Total hours obligations (hpy)	1549	1850	1850	1872	1992

b) quotas in terms of percentages

Obligation	1987	1996	2000	2005	2009
European films & audiovisual (%)	70	60	60	60	60
French films & audiovisual (%)		67	40	40	40
Original French audiovisual (%)				66	66
Revenues to production of French audiovisual (%)	15	15	15	16	11.25
Revenues to production of audiovisual (%)	-	-	-	-	12.5
Revenues to indie production of French AV (%) (1)	7 (3)	10	10	11	9.375
Revenues to original productions of Fr AV (%) (1a)	-	-	-	11	8.33
Revenues to animation production (%) (4)	-	0.6	0.6	0.6	0.6
Percentage of investments in HD production (%)	-	-	-	-	80
Revenues for production of French films (%)	-	3	3	2.5	2.5
Revenues for production of EU films (%)	-	-	-	3.2	3.2
Revenues for production of indie films (%) (2)	-	-	75	75	75

Notes: (1) included in the overall 15% contribution; (1a) 2/3 of the total investment; (2) from the overall film investment (3%); (3) obligation was of investing 380mF in the former Societe Francaise de Productions, by average, translated to a percentage; (4) from 2005 the obligation is 2/3 of total investments in indie productions.

Sources: (CSA, 2001e, 2006g, 2010d; France, 1987b, 1990a, 1990b, 1996)

Summary:

As can be seen from the total hourly quotas, the main commercial broadcaster has more generalist obligations than any of France Televisions' channels. The level of hourly obligations is comparable to British Channel 5's. Moreover, contrary to the British cases of ITV and Channel 5 the obligations were not eased. On the contrary, the financial contributions towards the production of content increased through time as is the case with the other French channels.

Table 66 – Canal Plus (paytv-air-channel) stipulated content quotas.

a) quota in terms of number

Obligation	1986	1995	2000	2005	2009
Max number of films	364	365	365	500	500

b) quotas in terms of percentages

Obligation	1986	1995	2000	2005	2009
EU films and AV (%)	60	60		60	60
French films and AV (%)	50	40		40	40
Revenues for film acquisition (%) (2)	20	20	20	-	-
Revenues for French or EU film prod. (%)		4.5		-	-
Revenues for indie French or EU film prod. (%)		2.25		-	-
Revenues for French or EU AV prod. (%) (1)		2.5	2.75	4.5	3.6
Revenues for indie French or EU AV prod. (%)		1.7	2.75	3	3.155
Revenues for EU film prod. (%)	-	-	-	12	12
Revenues for French film prod. (%)	-	-	-	9	9
Indie proportion of films (%)	-	-	-	75	75

Notes: (1) to invest 2.5% from the 20% overall quota; (2) 20% resulted in a reduction from a 25% original quota.

Sources: (CSA, 2001a, 2006a, 2010a; France, 1986; 1990b: Art. 10; 1995a: Art. 10; 1995b; 2009: Art. 11)

Summary:

As the obligations show, the first ‘subscription-to-air’ French channel is highly focused on films, both distribution and production. Although the financial contributions were slightly lowered, channel’s contributions towards film production are the highest of the French scenario. Additionally, despite the increase in the maximum number of films allowed, three out of four screened films must be independent productions.

Table 67 – M6 (former music channel) stipulated content quotas.

a) quotas in terms of hours (and number where indicated)

Obligation	2000	2005	2009
Max. Number of films	192	192	192
Min. production of French video clips (number) (1), (2)	150	150	120
Min. production of new talents video clips (number) (1)	30	30	70
French and EU audiovisual works (hpy) (1)	100	100	162

b) quotas in terms of percentages

Obligation	2000	2005	2009
European films & audiovisual (%)	60	60	60
French films & audiovisual (%)	40	40	40
Proportion of programmes in HD (%)			30
EU animation (%) (1)	50	50	50
Music total/French (%) (1)	30/50	30/50	24/50
European programmes (%) (1)	70		
Revenues to production of French & EU audiovisual (AV) (%)		18	15
Revenues to production of French audiovisual (%)		13.5	9.45
Revenues to original AV production (%) (3)		12	10
Revenues to production of indie AV (%) (3)		9	9
Revenues to production of French & EU animation (%)		1	1
Revenues for production of indie animations (%) (3)			0.7
Revenues to AV production in HD (%)			50.0
Revenues for production of EU films (%)		3.2	3.2
Revenues for production of French films (%)		2.5	2.5
Revenues for production of indie films (%)	75	75	75

Notes: (1): from 2009 the obligation is in HD also; (2): there is also an obligation to invest in music programmes; (3): 2/3 of the total AV obligation.

Sources: (CSA, 2001d: 9-10; 2006f: 12-3; 2010c: 11-2)

Summary:

M6 was originally French's answer to American MTV. The channel now is more generalist although not as a result of different obligations. The channel still has music-related quotas not found for the other French channels. The same kind of financial contributions towards the production of content were found for this channel as well and in the same levels as for TF1. Recently the channel was also obliged to invest in animation and HD productions.

ANNEX 9 –AUDIENCE SHARES AND RANKINGS OF THE MOST VIEWED PROGRAMMES

Table 68 – Average time per day spent using communication services in the UK (in minutes)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	Exponential regression	Year forecasted to reach	
											112.5 minutes	225 minutes
Television	218	224	224	222	219	224	218	225	225			
Fixed internet	19	6	9	12	21	14	24	25	27	$y = 8.1344e^{0.1316x}$	2020	2025
Mobile	3	5	6	6	3	2.7	10	11	13	$y = 2.767e^{0.1442x}$	2026	2031

Source: (Ofcom, 2006b: 39; 2007a: 17; 2008b: 28; 2009a: 18; 2010a: 19)

Notes:

- Exponential regression fitted as calculated by MS Excel, where y represents the minutes and x the year.
- To calculate the year the inverse formula is $x = \ln(y/8.1344) / 0.1316$
- Year forecasted by the inverse formula, adding 2000 to the result.
 - For 112.5 minutes (half the current consumption of television) the calculation for ‘fixed internet’ is $x = \ln(112.5/8.1344)/0.1316 + 2000 = 2020$
- In an attempt to predict future figures for those new services, considering that the time spent on the internet and on mobiles will increase exponentially, with no saturation (a maximum growth scenario), an exponential regression based on those previous year’s figures, as shown in the graph on Figure 21, estimates that internet and mobile users will spend half of the time currently spent on television (112.5 minutes) by the years 2020 and 2026, respectively, and to the current levels (225 minutes) only by 2025 and 2031.

Table 69 – International television viewing time (in minutes)

	2005	2006	2007	2008	2009
UK	219	216	218	225	225
France	206	204	207	204	205
Brazil	n. a.	n. a.	n. a.	225	227

Source: (Ofcom, 2006c: 30; 2007c: 126; 2008c: 139; 2010c: 13, 163)

Table 70 – Audience share of main broadcasters in the UK (in millions)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
BBC 1	29.5	28.4	27.2	26.9	26.2	25.6	24.7	23.3	22.8	22.0	21.8	20.9	20.8
ITV	31.7	31.2	29.3	26.7	24.1	23.7	22.8	21.5	19.6	19.2	18.4	17.8	17.0
Channel 4	10.3	10.3	10.5	10.0	10.0	9.6	9.7	9.7	9.8	8.8	8.2	7.5	7.0
BBC 2	11.3	10.8	10.8	11.1	11.4	11.0	10.0	9.4	8.8	8.5	7.8	7.5	6.9
Five	4.3	5.4	5.7	5.8	6.3	6.5	6.6	6.4	5.7	5.1	5.0	4.9	4.5
Others	12.9	14.0	16.6	19.6	22.1	23.6	26.2	29.6	33.3	36.5	38.8	41.4	43.7

Source: (BARB, 2011)

Table 71 – Audience share of main broadcasters in France (in millions)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
TF1	34.8	34.9	33.1	32.3	32.3	30.6	31.8	32.4	31.7	30.8	27.4	26.1	24.5
France 2	23.4	23.3	23.3	22.2	22.0	20.8	21.7	20.9	20.3	19.2	18.5	16.7	16.0
France 3	17.2	16.4	16.9	17.3	16.6	15.5	15.5	15.0	14.9	14.4	13.6	11.8	10.7
M6	12.3	12.9	11.9	12.7	12.5	12.6	11.9	12.0	12.1	11.3	11.0	10.8	10.4
Canal Plus	4.7	4.6	4.1	3.7	3.6	4.7	3.9	3.6	3.5	3.5	3.4	3.1	3.1
Arte	3.6	3.8	3.7	3.6	4.1	5.2	5.0	4.8	4.7	4.7	4.1	1.7	1.6
Others	4.0	4.1	7.0	8.2	8.9	10.6	10.2	11.3	12.7	16.3	22.0	29.8	33.7
Digital only (1)													
TMC												2.6	3.3
France 5											4.1	3.1	3.2
W9												2.5	3.0
Guilli												1.8	2.2
France 4												1.1	1.6
Other digitals											22.0	18.7	20.3

Source: (IP Network, 1999: 144, 388; 2000: 106, 253; 2001: 136, 295; 2003: 114, 273; 2004: 122, 281; 2005: 157, 412; 2006: 165; 2008: 166; 2010: 173, 438; 2011: 172, 591)

Note: (1) From 'Others'

Table 72 – Audience share of main broadcasters in Brazil (in millions)

	2005	2006	2007	2008	2009	2010
Globo	51.9	51.9	47.6	44.3	45.2	43.2
SBT	19.4	16.1	14.6	14.3	13	12.7
Bandeirantes	4.3	4.3	4.6	4.8	5.2	5.1
RedeTV!	2.3	2.1	2.2	2.4	2.5	2.4
Record	9	10.9	14.6	16.7	16.1	16.5
Others	13.1	14.7	16.4	17.5	18.1	20.1

Source: (Grupo de Midia, 2009: 215; 2011: 293-4)

Table 73 – Audience share of the bouquet (including spin-off channels), grouped by main broadcasters – UK (in millions)

	2004	2007	2009
All BBC	29.6	28.9	30.2
All ITV	19.1	20.7	21.9
All Channel 4	7.6	12.8	12
All Channel 5	5	5.5	5.8
All Sky	12.2	8.4	7.7
Others	26.5	23.7	22.4

Source: (BARB, 2011)

Notes: Grouped the audience shares of the following channels:

- BBC: 1, 2, 3 & 4, News, Parliament, Cbbc, Cbeebies, BBC HD;
- ITV: 1, 2, 3 & 4, News and +1s;
- Channel 4: E4, Film 4, Kiss, Magic, More 4 and +1s;
- Five: 5 USA, 5* and +1s
- Sky: all Sky branded channels, including films, sports, news, etc.

Table 74 – Audience share of the bouquet (including spin-off channels), grouped by main broadcasters – France (in millions)

	2008	2009	2010
TF1 + TMC	27.4	28.7	27.8
France 2-5 & Gulli	36.2	34.5	33.7
M6 + W9	11.0	13.3	13.4
Canal Plus	3.4	3.1	3.1
Arte	4.1	1.7	1.6
Others	22.0	18.7	20.3

Source: (IP Network, 2010: 173, 438; 2011: 172, 591)

Notes: Grouped the audience shares of the following channels:

- TF1: TMC (according to Wikipedia owned by TF1);
- France Televisions: FT 2, 3, 4 & 5, Gulli (according to Wikipedia partially owned by FT and Lagerdere Active);
- M6: W9 – name W9 as ‘the mirror’ of M6 - (according to Wikipedia owned by M6);
- Arte: bi-national channel owned by France (50% - FT (22.5%), State (12.5%), Radio France (7.5%) and Institute Nacional de l’Audiovisuel (7.5%)) and Germany (50% - ARD (25%) and ZDF (25%)) (Arte, 2012).

Table 75 – Audience and nationality of the top programmes of all channels - UK

1998				
Rank	Channel	Programme	Audience (%)	National
1	ITV	FBAL W.CUP ARGENTINA-ENGLAND	45.9	y
2	ITV	FBAL W.CUP POST MATCH	37.5	y
3	ITV	FBAL W.CUP ROMANIA-ENGLAND	37.4	y
4	BBC 1	FBAL W.CUP COLOMBIA-ENGLAND	36.5	y
5	ITV	CORONATION STREET	36.4	y
6	ITV	WHO WANTS TO BE A MILLIONAIRE?	33.9	y
7	ITV	HEARTBEAT	33.7	y
8	BBC 1	EASTENDERS	32.8	y
9	ITV	CELEBRITY STARS IN THEIR EYES	30.9	y
10	BBC 1	FBAL W.CUP BRASIL-FRANCE	30.5	n
11	BBC 1	CASUALTY	30.1	y
12	BBC 1	MEN BEHAVING BADLY	29.4	y
13	BBC 1	FBAL W.CUP FRANCE-CROATIA	29.2	n
14	BBC 1	FORREST GUMP	28.8	n
15	ITV	GOODNIGHT MR TOM	28.3	y
16	ITV	FBAL W.CUP BRAZIL-NETHERLANDS	28.1	n
17	ITV	YOU'VE BEEN FRAMED	26.8	y
18	ITV	EMMERDALE	26.6	y
19	ITV	DIANA: SECRETS OF THE CRASH	26.5	y
20	ITV	FBAL W.CUP CORONATION STREET SPECIAL	26.2	y
Total Audiences			635.5	
Nationally originated			518.9	
Imported format			0	
Imported			116.6	
National proportion			82%	
Nationally originated proportion			82%	

Source: (IP Network, 1999: 388)

...continuing Table 75

2004				
Rank	Channel	Programme	Audience (%)	National
1	BBC 1	FBAL EU CHMP PORTUGAL-ENGLAND	38.5	y
2	BBC 1	FBAL EU CHMP CROATIA-ENGLAND	34.7	y
3	ITV	FBAL EU CHMP FRANCE-ENGLAND	33.4	y
4	ITV	CORONATION STREET	31.1	y
5	ITV	I'M A CELEBRITY- GET ME OUT OF HERE!	28.9	y
6	BBC 1	EASTENDERS	28.1	y
7	ITV	A TOUCH OF FROST	27.1	y
8	ITV	FBAL EU CHMP ENGLAND-SWITZERLAND	26.3	y
9	BBC 1	THE VICAR OF DIBLEY	24.1	y
10	ITV	EMMERDALE	23	y
11	BBC 1	STRICTLY COME DANCING	22.6	y
12	ITV	HEARTBEAT	22.6	y
13	ITV	CHRISTMAS LIGHTS	22	y
14	ITV	MIDSOMER MURDERS	21.5	y
15	BBC 1	FBAL EU CHMP PORTUGAL-GREECE	21.4	n
16	ITV	LIFE BEGINS	20.9	y
17	ITV	DOC MARTIN	20.4	y
18	BBC 1	CASUALTY	19.7	y
19	BBC 1	BBC NEWS	19.6	y
20	ITV	THE ROYAL	19.2	y
Total Audiences			505.1	
Nationally originated			483.7	
Imported format			0	
Imported			21.4	
National proportion			96%	
Nationally originated proportion			96%	

Source: (IP Network, 2004: 281)

...continuing Table 75

2009					
Rank	Channel	Programme	Audience (%)	National	Imported Format
1	ITV	BRITAIN'S GOT TALENT	33.4	y	
2	ITV	BRITAIN'S GOT TALENT	29.3	y	
3	ITV	THE X FACTOR	29.2	y	
4	ITV	THE X FACTOR	24.2	y	
5	ITV	CORONATION STREET	22.3	y	
6	BBC 1	THE ROYLE FAMILY	22	y	
7	BBC 1	DANCING WITH THE STARS	21.7	y	
8	BBC 1	EASTENDERS	21.3	y	
9	ITV	I DREAMED A DREAM - THE SUSAN BOYLE	21.2	y	
10	ITV	DANCING ON ICE	21.1	y	
11	ITV	DOC MARTIN	20.1	y	
12	BBC 1	DOCTOR WHO	19.8	y	
13	BBC 1	JONATHAN CREEK	19.5	y	
14	ITV	I'M A CELEBRITY - GET ME OUT OF HERE!	19.4	y	
15	BBC 1	THE APPRENTICE	19.1	y	y
16	ITV	WHITECHAPEL	18.7	y	
17	BBC 1	GAVIN & STACEY	18.7	y	
18	ITV	THE ROYAL VARIETY PERFORMANCE	18	y	
19	BBC 1	CHILDREN IN NEED 2009	18	y	
20	BBC 1	NEW TRICKS	17.8	y	
Total Audiences			434.8		
Nationally originated			415.7		
Imported format			19.1		
Imported			0.0		
National proportion			100%		
Nationally originated proportion			91%		

Source: (IP Network, 2009)

...continuing Table 75

2010					
Rank	Channel	Programme	Audience (%)	National	Imported Format
1	BBC 1	EASTENDERS	28.8	y	
2	ITV	THE X FACTOR	28.8	y	
3	BBC 1	FBAL W. CUP ENGLAND-GERMANY	27.7	y	
4	BBC 1	STRICTLY COME DANCING	24.9	y	
5	ITV	CORONATION STREET	24.6	y	
6	BBC 1	FBAL W. CUP NETHERLAND-SPAIN	23.5	n	
7	ITV	FBAL W. CUP ENGLAND-ALGERIA	23.1	y	
8	ITV	BRITAIN'S GOT TALENT	22.4	y	
9	BBC 1	COME FLY WITH ME	21.7	y	
10	ITV	FBAL W. CUP ENGLAND-USA	21.6	y	
11	ITV	I'M A CELEBRITY GET ME OUT OF HERE!	21.6	y	
12	BBC 1	DOCTOR WHO	21.1	y	
13	BBC 1	FBAL W. CUP SLOVENIA-ENGLAND	20.3	y	
14	BBC 1	THE ROYLE FAMILY	19.7	y	
15	BBC 1	FBAL W. CUP GERMANY-SPAIN	18.4	n	
16	BBC 1	GAVIN & STACEY	18	y	
17	ITV	DOWNTON ABBEY	17.8	y	
18	ITV	EMMERDALE	17.5	y	
19	ITV	A TOUCH OF FROST	17.4	y	
20	BBC 1	BBC NEWS	16.9	y	
Total Audiences			435.8		
Nationally originated			393.9		
Imported format			0		
Imported			41.9		
National proportion			90%		
Nationally originated proportion			90%		

Source: (IP Network, 2010: 438)

Table 76 – Audience and nationality of the top programmes of all channels - France

1998				
Rank	Channel	Programme	Audience (%)	National
1	TF1	FBAL. W.CUP BRASIL-FRANCE	41.4	y
2	TF1	LA REMISE DE LA COUPE	40.3	y
3	TF1	FBAL. W.CUP FRANCE-CROATIA	35.6	y
4	TF1	LE COMTE DE MONTE CRISTO	27.9	y
5	F3	FBAL. W.CUP FRANCE-SOUTH AFRICA	27.5	y
6	TF1	JOURNAL FBAL. W.CUP	27.4	y
7	F2	FBAL. W.CUP BRASIL-NETHERLANDS	26.8	n
8	TF1	UN AMOUR DE COUSINE	26.4	y
9	TF1	TF1 20 HEURES	25.5	y
10	TF1	FBAL. W.CUP FRANCE-SAUDI ARABIA	25.2	y
11	TF1	MRS DOUBTFIRE	24.8	n
12	TF1	JULIE LESCAUT	24.8	y
13	TF1	ELECTION DE MISS FRANCE/1999	24.6	y
14	TF1	THE BODYGUARD	24.4	n
15	TF1	LES TROIS FRERES	24.4	y
16	F3	FBAL. W.CUP FRANCE-ITALY	24.3	y
17	TF1	FBAL FRANCE-SPAIN	24.0	y
18	TF1	PEDALE DOUCE	23.8	y
19	TF1	DROP ZONE	23.0	n
20	TF1	NAVARRO	22.9	y
Total Audiences			545.0	
Nationally originated			446	
Imported format			0	
Imported			99.0	
National proportion			82%	
Nationally originated proportion			82%	

Source: (IP Network, 1999: 144)

...continuing Table 76

2004				
Rank	Channel	Programme	Audience (%)	National
1	TF1	FBAL EU CHMP SWITZERLAND-FRANCE	30.5	y
2	F3	FBAL EU CHMP FRANCE-GREECE	29.5	y
3	F2	FBAL EU CHMP CROATIA-FRANCE	28.2	y
4	F2	FBAL EU CHMP CUP CEREMONY	27.5	n
5	TF1	FBAL EU CHMP FRANCE-ENGLAND	27.3	y
6	F2	FBAL EU CHMP PORTUGAL-GREECE	25.1	n
7	TF1	TF1 20:00	24.6	y
8	TF1	MONSIEUR BATIGNOLE	24.5	y
9	TF1	JULIE LESCAUT	24.3	y
10	TF1	FBAL EU CHMP PORTUGAL-ENGLAND	23.9	n
11	TF1	ZODIAQUE	23.1	y
12	TF1	ASTERIX ET OBELIX MISSION CLEOPATRE	23.1	y
13	TF1	UNE FEMME D'HONNEUR	22.2	y
14	TF1	FBAL CL AS MONACO-FC PORTO	22	y
15	TF1	FBAL EU CHMP PORTUGAL-NETHERLANDS	21.5	n
16	TF1	L'ENFANT DE L'AUBE	21.2	y
17	TF1	PRESIDENTIAL SPEECH	21.1	y
18	TF1	LES ENFOIRES DANS L'ESPACE	20.9	y
19	TF1	NAVARRO	20.8	y
20	TF1	MON VOISIN DU DESSUS	20.7	y
Total Audiences			482.0	
Nationally originated			384	
Imported format			0	
Imported			98.0	
National proportion			80%	
Nationally originated proportion			80%	

Source: (IP Network, 2004: 122)

...continuing Table 76

2009					
Rank	Channel	Programme	Audience (%)	National	Imported Format
1	TF1	HOUSE MD	23.3	n	
2	TF1	LES ENFOIRES FONT LEUR CINEMA	21.7	y	
3	TF1	CSI: NY	20.8	n	
4	TF1	FBAL. W. CUP (QUAL.) FRANCE-IRELAND	19.6	y	
5	TF1	CRIMINAL MINDS	19.5	n	
6	TF1	ASTERIX & OBELIX MISSION CLEOPATRE	18	y	
7	TF1	WAR OF THE WORLDS	17.8	n	
8	TF1	SURVIVOR	17.4	y	y
9	TF1	CSI: MIAMI	17.4	n	
10	TF1	16 BLOCKS	17.3	n	
11	TF1	THE DEVIL WEARS PRADA	17.3	n	
12	M6	NAVY CSIS	17.1	n	
13	TF1	GREY'S ANATOMY	16.8	n	
14	TF1	TAXI IV	16.6	y	
15	TF1	ARTHUR ET LES MINIMOYS	16.4	y	
16	TF1	LA MAISON DU BONHEUR	16.4	y	
17	TF1	LE DINNER DE CONS	16.4	y	
18	TF1	INSIDE MAN	16	n	
19	TF1	MISSION: IMPOSSIBLE III	15.9	n	
20	TF1	FBAL W. CUP (QUAL.) SERBIA-FRANCE	15.7	y	
Total Audiences			357.4		
Nationally originated			140.8		
Imported format			17.4		
Imported			199.2		
National proportion			44%		
Nationally originated proportion			35%		

Source: (IP Network, 2009)

...continuing Table 76

2010					
Rank	Channel	Programme	Audience (%)	National	Imported Format
1	TF1	FBAL. W. CUP FRANCE-MEXICO	26	y	
2	TF1	FBAL. W. CUP FRANCE-URUGUAY	25.7	y	
3	TF1	BIENVENUE CHEZ LES CH'TIS	24.7	y	
4	TF1	FBAL. W. CUP NETHERLANDS-SPAIN	24.2	n	
5	TF1	LES ENFOIRES LA CRISE DE NERFS	20	y	
6	TF1	FBAL. W. CUP GERMANY-SPAIN	18.9	n	
7	TF1	TF1 20 HEURES	17.8	y	
8	TF1	FBAL. W. CUP NETHERLANDS-SPAIN CUP HANDOVER	17.4	n	
9	TF1	ASTERIX AUX JEUX OLIMPIQUES	17.3	y	
10	TF1	MENTALIST	17.2	n	
11	TF1	FBAL. W. CUP NETHERLANDS-URUGUAY	16.7	n	
12	TF1	FBAL. EU CHMP (QUAL.) FRANCE-LUXEMBOURG	16.2	y	
13	TF1	CLEM	16.2	y	
14	TF1	INTERVENTION DU PREMIER MINISTRE	15.7	y	
15	TF1	DR HOUSE	15.6	n	
16	TF1	FBAL. W. CUP SPAIN-PORTUGAL	15.5	n	
17	TF1	DECLARATION DU PRESIDENT DE LA REPUBLIQUE	15.2	y	
18	TF1	FBAL. EU CHMP (QUAL.) FRANCE-BELARUS	14.9	y	
19	TF1	RATATOUILLE	14.8	n	
20	TF1	PAROLES DE FRANCAIS	14.8	y	
Total Audiences			364.8		
Nationally originated			224.5		
Imported format			0		
Imported			140.3		
National proportion			62%		
Nationally originated proportion			62%		

Source: (IP Network, 2010: 173)

Table 77 – Audience and nationality of the top 5 programmes of the main channels in the city of Sao Paulo - Brazil

2004					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
SABADACO	286	y	FUTEBOL AO VIVO QA	640	y
JOGO DA VIDA	243	y	CIDADE ALERTA LOCAL	533	y
BOA NOITE BRASIL	275	y	CINE RECORD ESPECIAL NOT	578	n
OS CAVALEIROS DO ZODIACO	232	n	DOMINGO DA GENTE	516	y
VIDEOS INCRIVEIS NOT	248	n	PROGRAMA RAUL GIL	517	y
Canal 21			Rede Mulher		
MRBEAN	101	n	CINE REDE MULHER SBM	26	n
AFEITICEIRA	82	n	MULHERES EM FOCO	9	y
CINE21	60	n	SESSAO CINEMA	7	n
SEXANDTHECITY	41	n	MESTRE CUCA NOT	7	y
JORNALDEZ	49	y	QUALIDADE DE VIDA VES	5	y
Cultura			Rede Tv!		
COCORICO SB	214	y	EU VI NA TV	622	y
CONTOS DE FADA VES	219	n	PANICO NA TV	431	y
RUPERT DM	175	n	PANICO REPRISE	364	y
TELETUBBIES SB	201	n	SUPERPOP	252	y
RUPERT VES 1	161	n	TV FAMA MELHORES MOMENTOS	207	y
Gazeta			SBT		
MESA REDONDA	131	y	TELA DE SUCESSOS	1,221	n
GAZETA ESPORTIVA	110	y	CINE ESPETACULAR	1,163	n
PROGRAMA SERGIO MALLANDRO	92	y	SESSAO DAS DEZ	1,189	n
MULHERES	59	y	MEU CUNHADO	1,078	y
PASSARELA DO SAMBA	64	y	QUINTA NO CINEMA	974	y
Globo					
NOVELA III - Senhora do Destino	3,497	y			
TELA QUENTE	3,213	n			
JORNAL NACIONAL	2,680	y			
A GRANDE FAMILIA	2,681	y			
GLOBO REPORTER	2,704	y			
MTV					
TOP TOP MTV SX 1930	64	y			
VJS EM ACAO SG 2230	43	y			
TOP 20 BRASIL SB 1700	50	y			
HERMES E RENATO QA 2300	55	y			
DANIELA NO PAIS DA MTV SG 2130	41	y			

Source: (Ibope, 2012: week 39, 20/09-26/09/2004)

Total (millions)	28
National total (millions)	19
National proportion	69%

...continuing Table 77

2005					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
VIDEOS INCRIVEIS VES	385	n	REPORTER RECORD SG	790	y
JORNAL DA BAND	365	y	FUTEBOL AO VIVO QA - SANTOS X FLUMINENSE	590	y
BRASIL URGENTE 2	353	y	PROGRAMA RAUL GIL	607	y
CINE BAND PRIVE	333	n	NOVELA DAS SETE - ESSAS MULHERES	637	y
SABADACO	311	y	TUDO E POSSIVEL	560	y
Cultura			Rede Tv!		
OS SETE MONSTRINHOS VES 1	218	n	EU VI NA TV	583	y
CAILLOU E ANIMACOES VES	210	n	PANICO NA TV	538	y
VIOLA MINHA VIOLA MAT	229	y	PANICO REPRISE	227	y
RELIGIOSO MAT	211	y	SUPERPOP	245	y
CAMUNDONGOS AVENT VES 1	211	n	REDE TV ESPORTE NOT	191	y
Gazeta			SBT		
MESA REDONDA	167	y	PROGRAMA SILVIO SANTOS DM	1,408	y
GAZETA ESPORTIVA	138	y	TELA DE SUCESSOS	1,244	n
TV CULINARIA	78	y	CINE ESPETACULAR	1,145	n
MULHERES 1	65	y	TELE SENA	1,266	y
AMIGOS DO FORRO	66	y	RODA A RODA SSX	1,086	y
Globo					
NOVELA III - AMÉRICA	4,378	y			
FUTEBOL VES - BRASIL X CHILE	3,027	y			
CASSETA E PLANETA	3,098	y			
TELA QUENTE	3,148	n			
JORNAL NACIONAL	2,911	y			

Total (millions)	31
National total (millions)	24
National proportion	78%

Source: (Ibope, 2012: week 35, 29/08-04/09/2005)

...continuing Table 77

2006					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
PROGRAMA RAUL GIL	488	y	TELA MAXIMA DM	1,136	n
MANDACARU	374	y	O APRENDIZ 3	902	y
TERRA SERTANEJA NOT	400	y	NOVELA DAS SETE - BICHO DO MATO	858	y
VIDEOS INCRIVEIS NOT	321	n	DOMINGO ESPETACULAR	769	y
NO CORACAO DO BRASIL	338	y	SERIE PREMIUM	700	n
Cultura			Rede Tv!		
CAMUNDONGOS AVENT VES 1	441	n	PANICO NA TV	418	y
CYBERCHASE SSX	394	n	PANICO REPRISE	431	y
ZOBOOMAFOO NOT	364	n	SUPERPOP	290	y
OS AMIGOS MISS SPIDER VES	343	n	A TARDE E SUA	176	y
OS SETE MONSTRINHOS VES 1	332	n	FUTEBOL VES - SPORT RECIFE X AVAI	156	y
Gazeta			SBT		
MESA REDONDA	268	y	DOMINGO LEGAL PSS	1,356	y
GAZETA ESPORTIVA	250	y	TOPA OU NAO TOPA	1,385	y
MULHERES 3	147	y	8 E MEIA NO CINEMA	1,339	n
GAZETA NEWS VES	147	y	SUPER NANNY VES	1,014	n
PROG NERIVAN SILVA	166	y	CHAVES VES	952	n
Globo					
NOVELA III - PÁGINAS DA VIDA	4,293	y			
NOVELA II - COBRAS E LAGARTOS	3,639	y			
A GRANDE FAMILIA	3,688	y			
JORNAL NACIONAL	3,356	y			
SPTV 2A EDICAO	3,026	y			

Total (millions)	35
National total (millions)	27
National proportion	79%

Source: (Ibope, 2012: week 35, 28/08-03/09/2006)

...continuing Table 77

2007					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
FAMILIA DINOSSAUROS	523	n	NOVELA 3 - VIDAS OPOSTAS/CAMINHOS DO CORAÇÃO	1,722	y
JORNAL DA BAND	464	y	DOMINGO ESPETACULAR	1,132	y
BRASIL URGENTE 2	487	y	SIMPLE LIFE MUDANDO VIDA	995	y(*)
BRASIL URGENTE 1	437	y	TELA MAXIMA DM	974	n
TERRA NATIVA NOT	459	y	A TURMA DO PICA PAU	996	n
Cultura			Rede Tv!		
DE ONDE VEM NOT	374	y	PANICO NA TV	601	y
CYBERCHASE SSX	356	n	PANICO REPRISE	377	y
CHARLIE E LOLA	365	n	TV FAMA SSX	276	y
CASTELO RA TIM BUM NOT	316	y	DONAS CASA DESESPERAD QA	222	n
CAMUNDONGOS AVENT VES 1	295	n	DONAS CASA DESESPERAD DM	198	n
Gazeta			SBT		
GAZETA ESPORTIVA	219	y	DOMINGO LEGAL PSS	997	y
MESA REDONDA	235	y	8 E MEIA NO CINEMA	867	n
MULHERES 3	145	y	TELE SENA	884	y
GAZETA NEWS VES	127	y	A PRACA E NOSSA NOT	675	y
MULHERES 2	99	y	QUAL E A MUSICA SILVIO SANTOS	638	y
Globo					
NOVELA III - PARAISO TROPICAL	3,861	y			
JORNAL NACIONAL	2,790	y			
A GRANDE FAMILIA	2,879	y			
GLOBO REPORTER	2,728	y			
CASSETA E PLANETA	2,510	y			

Total (millions)	31
National total (millions)	25
National proportion	85%
Format totals (millions)	1.0
Format proportion	3%

Source: (Ibope, 2012: week 35, 27/08-02/09/2007)

Note: (*) Imported format

...continuing Table 77

2008					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
BRASIL URGENTE 2	457	y	IDOLOS	1,087	y(*)
BRASIL URGENTE 1	432	y	NOVELA 2 - OS MUTANTES CAMINHOS DO CORACAO	1,118	y
JORNAL DA BAND	419	y	NOVELA 3 - CHAMAS DA VIDA	1,057	y
PROGRAMA RAUL GIL	334	y	DOMINGO ESPETACULAR	957	y
FUTEBOL VES	318	y	SUPER TELA NOT	889	n
Cultura			Rede Tv!		
VIOLA MINHA VIOLA MAT	166	y	PANICO REPRISE	373	y
PINKY DINKY DOO VES	174	n	PANICO NA TV	334	y
CYBERCHASE SSX	150	n	CAMPEONATO BRASILEIRO SERIE B	391	y
ARTHUR VES 1	161	n	DR HOLLYWOOD NOT	368	n
QUAL E BICHO NOT	156	y	FUTEBOL NOT	273	y
Gazeta			SBT		
GAZETA ESPORTIVA	219	y	DOMINGO LEGAL PSS	1,167	y
MESA REDONDA	137	y	PANTANAL	1,056	y
MULHERES 3	123	y	TELE SENA	909	y
GAZETA NEWS VES	122	y	SUPER NANNY NOT	841	n(*)
JORNAL DA GAZETA	107	y	PROGRAMA SILVIO SANTOS	662	y
Globo					
NOVELA III - A FAVORITA	3,056	y			
JORNAL NACIONAL	2,300	y			
A GRANDE FAMILIA	2,244	y			
NOVELA II - BELEZA PURA	2,094	y			
GLOBO REPORTER	2,108	y			

Total (millions)	27
National total (millions)	22
National proportion	90%
Format totals (millions)	1.1
Format proportion	4%

Source: (Ibope, 2012: week 35, 25/08-31/08/2008)

Note: (*) Imported format

...continuing Table 77

2009					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
FUTEBOL VES - SAO PAULO X PALMEIRAS	541	y	PROGRAMA DO GUGU	1,440	y
FUTEBOL NOT - GREM BARUERI X CORINTHIANS	457	y	DOMINGO ESPETACULAR	876	y
BRASIL URGENTE 2	367	y	REALITY SHOW 1	912	y(*)
BRASIL URGENTE 1	354	y	DOMINGO AVENTURA	694	n
JORNAL DA BAND	311	y	SUPER MAQUINA	732	n
Cultura			Rede Tv!		
VIOLA MINHA VIOLA MAT	178	y	PANICO NA TV	800	y
DOUG VES	136	n	PANICO REPRISE	484	y
ARTHUR VES	128	n	SUPERPOP	278	y
RELIGIOSO MAT	119	y	DR HOLLYWOOD NOT	301	n
SOM NA CAIXA COM O DJ CAO NOT	108	y	BROTHERS	223	n
Gazeta			SBT		
GAZETA ESPORTIVA	226	y	ELIANA	756	y
MESA REDONDA	157	y	PROGRAMA SILVIO SANTOS	599	y
ESPORTE INTERATIVO VES	121	y	ESQUADRAO DA MODA	499	y(*)
ESPORTE INTERATIVO	99	y	CHAVES VES	510	n
GAZETA NEWS VES	103	y	ARNOLD	498	n
Globo					
NOVELA III - CAMINHO DAS INDIAS	3,935	y			
JORNAL NACIONAL	3,038	y			
A GRANDE FAMILIA	2,668	y			
TELA QUENTE	3,033	n			
NOVELA II - CARAS E BOCAS	2,702	y			
Total (millions)		28			
National total (millions)		20			
National proportion		78%			
Format totals (millions)		1.2			
Format proportion		4%			

Source: (Ibope, 2012: week 35, 24/08-30/08/2009)

Note: (*) Imported format

...continuing Table 77

2010					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
POLICIA 24H	659	y(*)	DOMINGO ESPETACULAR	1,225	y
CQC	475	y(*)	PROGRAMA DO GUGU	1,001	y
A LIGA	458	y(*)	CINE RECORD ESPECIAL NOT	984	n
FUTEBOL NOT - FLUMINENSE x PALMEIRAS	429	y	NOVELA 22H - RIBEIRAO DO TEMPO	863	y
BRASIL URGENTE 2	386	y	REALITY SHOW - IDOLOS	810	y(*)
Cultura			Rede Tv!		
O PEQUENO GEORGE VES	182	n	PANICO NA TV	621	y
ARTHUR VES	177	n	PANICO REPRISE	377	y
DOUG	176	n	DR HOLLYWOOD NOT	288	n
CAMUNDONGOS AVENT VES	137	n	OPERACAO DE RISCO	286	y
VIOLA MINHA VIOLA MAT	140	y	TV KIDS NOT	223	n
Gazeta			SBT		
GAZETA ESPORTIVA	199	y	PROGRAMA SILVIO SANTOS	955	y
MESA REDONDA	163	y	ELIANA	849	y
MULHERES 2	80	y	DOMINGO LEGAL PSS	707	y
MULHERES 3	86	y	A PRACA E NOSSA NOT	751	y
MULHERES 1	67	y	RODA A RODA JEQUITI	678	y
Globo					
NOVELA III - PASSIONE	2,800	y			
JORNAL NACIONAL	2,187	y			
NOVELA II - TI TI TI	2,023	y			
A GRANDE FAMILIA	1,998	y			
SPTV 2A EDICAO	1,936	y			

Total (millions)	25
National total (millions)	20.8
National proportion	91%
Format totals (millions)	0.6
Format proportion	7%

Source: (Ibope, 2012: week 35, 30/08-05/09/2010)

Note: (*) Imported format

...continuing Table 77

2011					
Network / Programme	Audience (thousands)	National	Network / Programme	Audience (thousands)	National
Bandeirantes			Record		
BRASIL URGENTE 2	518	y	NOVELA 22H - VIDAS EM JOGO	1,086	y
POLICIA 24H	472	y	DOMINGO ESPETACULAR	1,062	y
FUTEBOL VES - CORITIBA X CORINTHIANS	450	y	A FAZENDA	964	y(*)
FUTEBOL NOT - INTER X SANTOS	459	y	PROGRAMA DO GUGU	925	Y
BRASIL URGENTE 1	411	y	NOVELA REBELDE	860	y(*)
Cultura			Rede Tv!		
VIOLA MINHA VIOLA MAT	178	y	PANICO NA TV	795	y
SR BRASIL MAT	203	y	PANICO REPRISE	357	y
MESTRES DO RISO MAT	151	y	DR HOLLYWOOD NOT	316	y
PLANETA TERRA DM	139	n	MEGA SENHA	260	y(*)
RODA VIVA	107	y	TV FAMA	220	y
Gazeta			SBT		
GAZETA ESPORTIVA	136	y	PROGRAMA SILVIO SANTOS	864	y
MESA REDONDA	132	y	RODA A RODA JEQUITI	600	y
MULHERES 3	95	y	SE ELA DANCA EU DANCO	589	y
EDICAO EXTRA	85	y	SERIE TARDE - AS VISOES DA RAVEN	552	n
TV CULINARIA	72	y	QUAL E SEU TALENTO	596	y
Globo					
NOVELA III - FINA ESTAMPA	3,325	y			
JORNAL NACIONAL	2,841	y			
NOVELA II - MORDE E ASSOPRA	2,680	y			
SHOW DE TERCA FEIRA 1 - TAPAS E BEIJOS	2,516	y			
SPTV 2A EDICAO	2,309	y			

Total (millions)	27
National total (millions)	24.3
National proportion	97%
Format totals (millions)	1.7
Format proportion	6%

Source: (Ibope, 2012: week 35, 29/08-04/09/2011)

Note: (*) Imported format

Table 78 – Total shares of the top programmes of main channels in the UK, France and Brazil (Sao Paulo)

	1998		2004		2009		2010	
	All prog.	Non football prog.	All prog.	Non football prog.	All prog.	Non football prog.	All prog.	Non football prog.
UK								
Top total audience shares	635.5	364.2	505.1	350.8	434.8	434.8	435.8	301.2
Nationally originated	518.9	335.4	483.7	350.8	415.7	415.7	393.9	301.2
From imported format	0.0	0	0.0	0	19.1	19.1	0.0	0
Imported programme	116.6	28.8	21.4	0.0	0.0	0.0	41.9	0.0
National proportion	82%	92%	96%	100%	100%	100%	90%	100%
'True' national proportion	82%	92%	96%	100%	91%	96%	90%	100%
France								
Top total audience shares	545.0	272.5	482.0	246.5	357.4	322.1	364.8	189.3
Nationally originated	446.0	200.3	384.0	246.5	140.8	105.5	224.5	141.7
Imported format	0.0	0	0.0	0	17.4	17.4	0.0	0
Imported	99.0	72.2	98.0	0.0	199.2	199.2	140.3	47.6
National proportion	82%	74%	80%	100%	44%	38%	62%	75%
'True' national proportion	82%	74%	80%	100%	35%	33%	62%	75%
Brazil								
Top total audience shares	n. a.	n. a.	28	27.8	28	27.4	25	24.9
Nationally originated	n. a.	n. a.	19.5	18.9	20.9	19.7	23.2	20.4
Imported format	n. a.	n. a.		0.0	1.2	1.4	1.9	2.4
Imported	n. a.	n. a.	8.9	8.9	6.3	6.3	2.2	2.2
National proportion	n. a.	n. a.	70%	68%	79%	77%	100%	91%
'True' national proportion	n. a.	n. a.	70%	68%	75%	72%	93%	82%

Source: Table 75, Table 76, Table 77.

Note:

- ‘Top total audience shares’, ‘Nationally originated’, ‘Imported format’ and ‘Imported’ figures:
 - UK and France: Index resulting of adding of the audiences shares (in %) achieved by the ‘top 20’ programmes in the country;
 - Brazil: Total audience (in millions) achieved by the ‘top 5’ of the main broadcasters in the city of Sao Paulo only (the biggest metropolitan region of Brazil).
- Definitions:
 - ‘Nationally originated’: programme produced in the country and not from an imported format;
 - ‘Imported format’: programme produced in the country from an imported format;
 - ‘Imported’: programme imported finished from abroad;
 - ‘National proportion’: proportion of programmes produced in the country including those based on imported formats;
 - ‘‘True’ national proportion’: proportion of programmes produced in the country excluding those based on imported formats.

Table 79 – Programmes and total audiences of the three top programmes per main channels in the UK during one specific week in September

Week ending 7/Sep/2008				Week ending 6/Sep/2009			
Channel	Programme	m	Nat.	Channel	Programme	m	Nat.
BBC1	EASTENDERS (MON 1959)	8.98	y	BBC1	NEW TRICKS (THU 2100)	8.53	y
	WHO DO YOU THINK YOU ARE? (WED 2100)	6.44	y		EASTENDERS (THU 1929)	8.33	y
	NEW TRICKS (MON 2059)	6.23	y		WAKING THE DEAD (SUN 2100)	6.86	y
BBC2	DRAGONS' DEN (MON 2101)	3.95	y	BBC2	DRAGONS' DEN (WED 2101)	4.04	y
	THE HAIRY BAKERS (MON 2030)	3.44	y		COAST (TUE 1959)	3.92	y
	MOCK THE WEEK (THU 2100)	3.1	y		LAST CHANCE TO SEE (SUN 2002)	3.31	y
ITV1	THE X FACTOR (SAT 1851)	9.57	y	ITV1	THE X FACTOR (SAT 1936)	12.84	y
	CORONATION STREET (MON 2029)	9.36	y		CORONATION STREET (MON 2028)	8.89	y
	EMMERDALE (FRI 1903)	6.62	y		EMMERDALE (THU 2000)	6.83	y
Channel 4	BIG BROTHER (FRI 2159)	5.17	y	Channel 4	BIG BROTHER (FRI 2201)	3.23	y
	THE SECRET MILLIONAIRE (TUE 2101)	4.51	y		JAMIE'S AMERICAN ROAD TRIP (TUE 2100)	3.16	y
	UGLY BETTY (FRI 2101)	3.12	n		LOCATION, LOCATION, LOCATION (WED 1959)	3.05	y
Channel 5	CSI MIAMI (TUE 2102)	2.7	n	Channel 5	CSI MIAMI (TUE 2102)	2.5	n
	CSI - NEW YORK (TUE 2201)	1.64	n		THE MASK (SUN 2003)	1.76	n
	NEIGHBOURS (MON 1729)	1.6	n		WARSHIP (MON 2102)	1.63	y
ITV 2	XTRA FACTOR (SAT 1951)	1.44	y	ITV 2	XTRA FACTOR (SAT 2035)	1.73	y
BBC 3	EASTENDERS (TUE 2159)	0.98	y	BBC 3	EASTENDERS (TUE 2201)	1.14	y
	FAMILY GUY (SUN 2212)	0.56	n		FILM: NATIONAL TREASURE (2004) (SUN 1901)	0.93	n
Dave	QI (MON 2100)	0.59	y		FAMILY GUY (TUE 2324)	0.66	n
E4	BIG BROTHER'S BIG MOUTH (FRI 2301)	1.19	y	E4	HOLLYOAKS (THU 1900)	0.77	y
	HOLLYOAKS (WED 1859)	0.79	y	fiver	HOME AND AWAY (TUE 1828)	0.68	n
fiver	HOME AND AWAY (WED 1828)	0.69	n	ITV 2	WHAT KATIE DID NEXT (THU 2100)	1.45	y
ITV 2	THE X FACTOR (SUN 1759)	0.99	y		THE X FACTOR (SUN 1858)	1.19	y
	FILM: THE BOURNE SUPREMACY (2004) (FRI 2148)	0.67	n	ITV 4	FILM: DEATH WISH V: THE FACE OF DEATH (WED 2247)	0.66	n
ITV 3	MIDSOMER MURDERS (SUN 2003)	1.1	y	More 4	COME DINE WITH ME (SUN 1925)	1.28	y
	TAGGART (SAT 2102)	0.63	y	Sky 1	HOUSE SEASON 5 (SUN 2103)	0.75	n
	INSPECTOR MORSE (THU 2109)	0.56	y				
More 4	COME DINE WITH ME (SUN 1850)	0.68	y				
Sky 1	THE SIMPSONS (SUN 1831)	0.75	n				
Sky Sports 1	LIVE US OPEN TENNIS FINAL (SUN 2129)	0.67	n				
Total audience national programmes (millions / %)		76.3	86%	Total audience national programmes (millions / %)		82.2	91%
Total audience imported programmes (millions / %)		12.4	14%	Total audience imported programmes (millions / %)		7.9	9%
Total audience of top 3 programmes per channels + others (millions / %)		88.7		Total audience of top 3 programmes per channels + others (millions / %)		90.1	

Source: Barb

Note: continued...

...continuing Table 79

Week ending 5/Sep/2010			
Channel	Programme	m	Nat.
BBC1	EASTENDERS (MON 2002)	8.77	y
	CASUALTY (SAT 2046)	5.97	y
	HOLBY CITY (TUE 2001)	5.7	y
BBC2	COAST (WED 2002)	3.42	y
	THE GREAT BRITISH BAKE OFF (TUE 2002)	3	y
	DRAGONS' DEN (MON 2102)	2.98	y
ITV1	THE X FACTOR (SAT 1930)	11.69	y
	CORONATION STREET (MON 2031)	10.2	y
	EMMERDALE (MON 1903)	7.04	y
Channel 4	FILM: TRANSFORMERS (2007) (SUN 1820)	3.25	n
	ULTIMATE BIG BROTHER (WED 2203)	2.97	y
	LOCATION LOCATION LOCATION (THU 2000)	2.45	y
Channel 5	CSI MIAMI (TUE 2104)	2.32	n
	FILM: THE PURSUIT OF HAPPYNESS (2006) (SUN 2057)	1.92	n
	NCIS (WED 2103)	1.67	n
ITV2	XTRA FACTOR (SAT 2040)	1.69	y
BBC 3	EASTENDERS (TUE 2202)	1.11	y
BBC 3	DON'T TELL THE BRIDE (TUE 2103)	1.1	y
BBC 3	EDINBURGH COMEDY FEST LIVE (THU 2100)	0.89	y
E4	UGLY BETTY (WED 2104)	0.97	n
ITV1 HD	LOVE LIFE & PRISON (FRI 2100)	0.71	y
ITV1 HD	COPS WITH CAMERAS (FRI 2004)	0.67	y
ITV2	FILM: CASINO ROYALE (1967) (MON 2206)	1.04	y
ITV2	FILM: THE WORLD IS NOT ENOUGH (WED 2209)	0.95	y
ITV2	THE X FACTOR (SUN 1845)	0.74	y
ITV4	BENIDORM (MON 2133)	0.93	y
More 4	COME DINE WITH ME (SUN 1816)	0.66	y
Sky 1	SIMPSONS S21 (SUN 1802)	0.75	n
Sky 1	LIE TO ME S2 (THU 2100)	0.74	n
Sky 1	THE MIDDLE S1 (SUN 1832)	0.72	n
Total audience national programmes (millions / %)		74.7	86%
Total audience imported programmes (millions / %)		12.3	14%
Total audience of top 3 programmes per channels + others (millions / %)		87.0	

Source: Barb

Table 80 – Programmes and total audiences of the three top programmes per main channels in France during one specific week in September

22 (MON)-28(SUN)/Sep/2008					
Channel	Programme	Audience (m)	Audience Share (%)	Date/start	National
TF1	Esprits criminels/Dernier rendez-vous	8.367	36.1	Wed, 21h33	n
	Les Experts/A la carte	8.298	31.7	Sun, 20h52	n
	L'affaire Bruay-en-Artois	6.486	27.5	Mon, 20h52	y
France 2	Cold Case/Noir total	6.529	26.4	Mon, 20h49	n
	Je vous trouve très beau	6.354	25	Sun, 20h54	y
	Les années bonheur	4.38	23.1	Sat, 20h54	y
France 3	Plus belle la vie	6.028	23.5	Thu, 20h22	y
	Les incorruptibles	4.401	19.1	Tue, 20h53	n
	Villa Marguerite	3.915	16	Thu, 20h54	y
Canal+	Les guignols de l'info	2.414	10.7	Thu, 20h00	y
	Le grand journal, la suite	2.108	8.4	Thu, 20h12	y
	Le grand journal	1.559	8.9	Thu, 19h09	y
France 5	C'est dans l'air/Crise: Gare a la panique	1.162	11.1	Fri, 17h46	y
	Ripostes/Face à face avec Laurent Fab..	0.915	7.7	Sun, 17h44	y
	Les escapades de Petitrenaud	0.833	9.4	Sun, 12h06	y
Arte	Plein soleil	1.038	4.7	Mon, 20h59	y
	Belle de jour	0.935	3.9	Thu, 20h59	y
	French Cancan	0.931	3.6	Sun, 20h45	y
M6	NCIS/La veuve noire	6.874	28.3	Fri, 20h51	n
	Florence Foresti & Friends	4.254	18.9	Thu, 20h48	y
	Desperate Housewives/Les conseq...	3.745	16	Tue, 21h36	n
Total national audience (million / %)		43.3	53%		
Total imported audience (million / %)		38.2	47%		
Total audiences (million)		81.5			

Source: (Relaxnews, 2008)

Note: ...continued

...continued from Table 80

21 (MON)-27(SUN)/Sep/2009					
Channel	Programme	Audience (m)	Audience Share (%)	Date/start	National
TF1	Les aventuriers de Koh_Lanta/EP5	7.86	30.4	Fri, 20h51	y
	Déclaration de Nicolas Sarkozy...	7.447	30.4	Wed, 20h05	y
	Les Experts Miami/Copies conformes	7.146	26.8	Tue, 20h50	n
France 2	Apocalypse/L'enfer	7.87	31	Tue, 21h31	y
	Cold Case/Le monde extérieur	6.073	23.1	Mon, 20h39	n
	Déclaration de Nicolas Sarkozy...	4.673	19.1	Wed, 20h05	y
France 3	Plus belle la vie	5.468	22.8	Thu, 20h11	y
	Louis la brocante/Louis voit double	5.201	21.2	Thu, 20h37	y
	Inspecteur Barnaby/Meurte sur le green	3.473	13.7	Sun, 20h35	n
Canal+	Les guignols de l'info	1.961	8.8	Wed, 19h58	y
	Le grand journal la suite	1.917	7.7	Wed, 20h12	y
	Canal Football Club	1.491	6.5	Sun, 19h33	y
France 5	C dans l'air	1.092	10.6	Thu, 17h48	y
	Les escapades de Petitrenaud	0.677	7	Sun, 12h04	y
	Une réserve pour felins/La bande...	0.614	7.8	Sat, 16h57	n
Arte	Le grand sommeil	1.229	4.9	Mon, 20h46	n
	Le Japon, l'Empereur et l'armée	1.052	4.3	Wed, 20h46	y
	Comme une image	1.04	4.2	Sun, 20h44	y
M6	NCIS/Retrouvailles	6.346	24.5	Fri, 20h46	n
	Un dîner vraiment parfait/Le combat...	4.375	18.4	Mon, 20h44	y
	Un dîner vraiment parfait/Le combat...	4.259	38.1	Mon, 22h53	y
W9	Léon	1.079	4.3	Sun, 20h34	y
	Les Simpson/Pour l'amour de Moe	0.95	4.1	Sun, 19h55	n
	Opération dragon	0.838	3.5	Thu, 20h39	n
Total national audience (million / %)		57.5	68%		
Total imported audience (million / %)		26.7	32%		
Total audiences (million)		84.1			

Source: (Gudella, 2009)

Note: ...continued

...continued from Table 80

20 (MON)-26(SUN)/Sep/2010					
Channel	Programme	Audience (m)	Audience Share (%)	Date/start	National
TF1	Mentalist/L'Appat du gain	9.278	35.8	Wed, 20h49	n
	Koh-Lanta/Episode 2	7.437	29.3	Fri, 20h49	y
	Les Experts Miami/Poupée de son	7.154	27.3	Tue, 20h50	n
France 2	Castle/La Malédiction de la momie	5.593	21.8	Mon, 20h39	n
	Prise directe/Héritage : Quand la vie bascule	3.595	14.3	Tue, 20h37	y
	Indigènes	3.411	13.5	Sun, 20h36	y
France 3	Plus belle la vie	5.179	21.1	Wed, 20h10	y
	Mademoiselle Drot	3.595	13.7	Sun, 20h36	y
	Le déshonneur d'Elisabeth Campbell	3.372	13.8	Thu, 20h36	n
Canal+	Les Guignols de l'info	2.183	10	Wed, 19h56	y
	Le Grand journal la suite	2.045	8.4	Tue, 20h11	y
	Canal Football Club	1.773	7.1	Sun, 19h37	y
France 5	C dans l'air/Seconde manif et après?	1.334	11.9	Thu, 17h49	y
	Soirée spéciale maladie d'Alzheimer : le debat	0.99	4.1	Tue, 21h34	y
	Vivre avec la maladie d'Alzheimer	0.974	3.7	Tue, 20h41	y
Arte	Les Fantômes du Chapelier	0.909	3.8	Mon, 20h41	y
	Trafalgar	0.797	3.7	Sat, 20h42	y
	1870, la bataille décisive de Sedan	0.743	3.6	Sun, 21h35	n
M6	NCIS/Une affaire de famille	5.443	21.4	Fri, 20h41	n
	Bones/Le Boucher de Burtonville	4.823	18.9	Thu, 20h42	n
	Zone interdite	3.655	14.7	Sun, 20h46	y
W9	les Sous-doués	1.298	5.3	Thu, 20h36	y
	Les Simpson/Grève à la centrale	1.118	5.3	Sat, 20h35	n
	Underworld 2 : Evolution	0.885	3.5	Sun, 20h37	n
TMC	La Ligue des gentlemen extraordinaires	1.44	5.8	Mon, 20h37	n
	Agence tous risques/Les Braconniers	0.957	4.4	Tue, 19h36	n
	Navarro/Zéro pointé	0.945	4.4	Sat, 20h37	y
France 4	Serial Noceurs	0.789	3.2	Mon, 20h36	n
	Football/Lorient - Brest	0.708	2.8	Tue, 20h45	y
	Le Cinquième élément	0.639	6	Sun, 22h32	y
Gulli	L'Instit/La revelation	0.79	3.1	Wed, 20h35	y
	The Goonies	0.682	2.7	Tue, 20h36	n
	Shuriken School	0.673	7.8	Fri, 17h27	y
Total national audience (million / %)		42.9	50%		
Total imported audience (million / %)		42.3	50%		
Total audiences (million)		85.2			

Source: (Gudella, 2010)

Table 81 – Sum of the audience shares of the ‘Top 10’ programmes of the year by type and origin in the UK and France

	UK				France			
	2004	2007	2009	2010	2004	2007	2009	2010
National films	40	43.5	52	35	118	125.1	84	67
Imported films	107	84.9	51	55	77	56.3	84	78
National sports	150	100.3	96	107	192	216.4	116	112
Imported sports	88	48.4	32	84	0	21.7	26	75
National series	192	155.5	140	140	161	89.5	30	41
Imported series	0	0	0	0	16	63	77	65

Source: International Television Key Facts yearbooks (IP Network, 2005, 2008, 2010, 2011)

Note: The values expressed in % are the sum of the individual shares achieved by the ‘top 10’ programmes and, therefore, do not top 100% but a theoretical 1000%.

Table 82 – Total audiences in million of the top three programmes in the UK, France and Brazil (Sao Paulo)

		2008	2009	2010
UK	National (m)	76.3	82.2	74.7
	Imported (m)	12.4	7.9	12.3
	Total (m)	88.7	90.1	87.0
	National (%)	86%	91%	86%
	Imported (%)	14%	9%	14%
France	National (m)	43.3	57.5	42.9
	Imported (m)	38.2	26.7	42.3
	Total (m)	81.5	84.1	85.2
	National (%)	53%	68%	50%
	Imported (%)	47%	32%	50%
Brazil (Sao Paulo)	National (m)	17.0	18.3	14.8
	Imported (m)	0.3	0.3	1.8
	Total (m)	17.4	18.6	16.6
	National (%)	98%	99%	89%
	Imported (%)	2%	1%	11%

Source: Table 77, Table 79 and Table 80.

Note: For the case of Brazil, used the same programmes as listed in Table 77 (Top 5 of the week) and totalled only the top three programmes.

Table 83 – Film production costs and audiences in the UK, France and Brazil

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	(calculations) / Sources
Produced films												(1)
UK	130	116	133	160	171	172	142	154	105	152	189	(BFI, 2011: 138)
France	230	216	210	238	264	264	275	286	283	315	297	(CNC, 2011c: [visas])
Brazil	23	30	29	30	49	45	72	78	79	84	75	(Ancine, 2010a: 8)
Average	UK= 149		FR= 265		BR= 57							Period average
Average growth	UK= 6%		FR= 3%		BR= 15%							Growth in the decade
Total investments												(2)
UK	457	816	1048	758	1822	1635	862	918	981	652	1139.1	(BFI, 2011: 138)
France	699	788	749	1003	912	1119	999	1045	1297	956	1440	(CNC, 2011b: [investiss])
Brazil			35	45	62	75	66	59	57	47	62	(Ancine, 2010a: 8)
Average film production cost (£mm) -												(2) / (1)
UK cost	3.5	7.0	7.9	4.7	10.7	9.5	6.1	6.0	9.3	4.3	6.0	
France cost	3.0	3.6	3.6	4.2	3.5	4.2	3.6	3.7	4.6	3.0	4.8	
Brazil cost			1.2	1.5	1.3	1.7	0.9	0.8	0.7	0.6	0.8	
Audience of national films (mm)												(3)
UK		39	40	27	40	55	30	46	51	64	41	Based on total admissions and UK market share (BFI, 2011: 9, 15)
France	48	78	65	61	76	65	85	66	87	75	74	(CNC, 2011c: [entrees ff])
Brazil		6.9	7.8	22	16.4	10.7	9.9	10.3	8.8	15.9	25.6	(Filme B, 2011)
Audience of national films (per capita)												(3) / population (a)
UK		0.66	0.67	0.45	0.67	0.91	0.49	0.76	0.83	1.03	0.48	
France		1.27	1.06	0.98	1.22	1.03	1.34	1.03	1.36	1.16	1.14	
Brazil		0.04	0.04	0.12	0.09	0.06	0.05	0.05	0.05	0.08	0.13	
National market share												
UK		25	23	16	23	33	19	29	31	37	24	(BFI, 2011: 15)
France	28.5	41	35	35	38	37	45	37	45	37	36	(CNC, 2011c: [natio])
Brazil		9	8	21	14	12	11	12	10	14	19	(Filme B, 2011)
Average	UK= 26		FR= 39		BR= 13							

Note: National population taken from World Bank indicators (available at World Bank, 2011).

Table 84 – Total revenues and hours of programmes of independent producers in the UK

		2003	2004	2005	2006	2007	2008	2009	2010
Revenues	Top 10 (m£)	656	794	826	930	697	687	701	713
	Top 20 (m£)	802	977	1,025	1,183	914	907	930	950
	Others (m£)	199	423	475	557	1,056	1,063	1,090	1,270
	Total (m£)	1,000	1,400	1,500	1,740	1,970	1,970	2,020	2,220
Produced hours	Top 10 (hh)	12,949	16,526	9,709	12,274	8,023	4,759	4,576	1,396
	Top 20 (hh)	14,159	18,185	10,787	13,200	9,144	5,807	5,923	3,036
	Others (hh)			5,213	5,800			14,393	14,376
	Total (hh)			16,000	19,000			20,316	17,412

Source: (Broadcast, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011)

Notes: Top 10/20: ten (twenty) biggest companies in terms of revenues (expressed in millions of £) and in terms of produced hours.

Table 85 – GDP growth from 2000 to 2009 (%)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Overall growth
3.9	2.5	2.1	2.8	3	2.2	2.8	2.7	-0.1	-4.9	18%
3.7	1.8	0.9	0.9	2.5	1.8	2.5	2.3	-0.1	-2.7	14%
4.3	1.3	2.7	1.1	5.7	3.2	4	5.7	5.1	-0.2	38%

Note: World Bank indicators (available at World Bank, 2011).

Table 86 – FTA broadcasting uptake, per technology, in Brazil including free-satellite estimate - 2009

Item	Description	Million households	%	Calculation / Source
1	Total households	58.6	100%	(IBGE, 2010: 80)
2	Households with television	55.4	95%	(Grupo de Midia, 2010: 276)
2.1	Urban households with television	48.4	87%	(IBGE, 2010: 96)
2.2	Rural households with television	7.0	12%	(2)-(2.1)
3	FTA viewers	47.9	82%	(2)-(4)
4	Paytv subscribers	7.5	13%	(Anatel, 2010: 12)
5	Cable	4.4	8%	(Anatel, 2010: 12)
6	DTH	2.8	5%	(Anatel, 2010: 12)
7	Other	0.4	1%	(Anatel, 2010: 12)
8	Total FTA + paytv	55.4	95%	(3)+(4)
9	Min. Rural free satellite (if all DTH are rural)	4.2	7%	(2.2)-(6)
10	Max. Rural free satellite (if all DTH are urban)	7.0	12%	(2)
	Free satellite estimate in literature	15.0	26%	(Castro, 2007)